

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 RICHMOND DIVISION
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9 IN RE:)
10 CIRCUIT CITY, INC., et al) Case No.08-35653-KRH
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16 Complete transcript of the testimony and
17 other incidents in the above, when heard on November
18 10, 2008, before the Honorable Kevin R. Huennekens,
19 Judge.
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1 THE CLERK: In the matter of Circuit
2 City Stores, Incorporated, et al, hearings,
3 first day motions by debtors item 1 through
4 24.

5 MR. HAYES: Good afternoon, Your
6 Honor.

7 THE COURT: Good afternoon,

8 MR. HAYES: Dion Hayes with McGuire
9 Woods on behalf of the debtors. First of
10 all, Your Honor, we want to thank the Court
11 very much for hearing these matters on an
12 expedited basis. It is very important to the
13 company that we be able to have an
14 opportunity to speak to Your Honor as soon as
15 we could after the case was filed, and the
16 company is very appreciative. Your Honor --

17 THE COURT: You're certainly
18 welcome.

19 MR. HAYES: Your Honor, if I could,
20 I would like to introduce to the Court
21 certain of the individuals that are in the
22 courtroom today that I think the Court will
23 be seeing more of in the future. Your Honor,
24 first of all Mr. Reggie Hedgebeth is Circuit
25 City's general counsel. Seated next to him

1 is or on the same row is Bruce Besanko who is
2 the company's chief financial officer. Jim
3 Marcum the acting chief executive officer,
4 would very much like to be here but he's at
5 headquarters spending time with the company's
6 employees at a very critical time in the
7 company's history. Your Honor, with me at
8 counsel table from Skadden Arps are Gregg
9 Galardi from Skadden's Wilmington, Delaware
10 office, Ian Fredericks, also from Skadden's
11 Wilmington, Delaware office. Seated next to
12 Mr. Hedgebeth is Chris Dickerson from
13 Skadden's Chicago office. Your Honor, I'm
14 going to move for the admission pro hac of
15 Skadden's attorneys who will present the
16 first days. Before I do that, I want to
17 address the one issue that the clerk's office
18 asked that we address with the Court this
19 morning. In all of the first day motions we
20 indicated at the end of our proposed orders
21 the required compliance with Rule 9022-1
22 related to orders. Your Honor, I wanted to
23 be specific as to who we sent notice to of
24 this hearing and the manner in which it was
25 sent. As the Court is well aware the filings

1 commenced late last night after midnight,
2 concluded in the 3 or 4 o'clock range, and at
3 approximately 4:30 this morning faxed notice
4 of the filing of the first day and notice of
5 the two websites, both the Court's website
6 and the KCC website, who is our claims agent,
7 were sent out to that fax list. Your Honor,
8 the entities that were on that fax list were
9 the top 50 unsecured creditors, the landlords
10 for the leases that we are proposing to
11 reject, and counsel for the prepetition
12 agent, counsel for Sony, the IRS, the SEC,
13 the secretary of treasury, the attorney
14 generals for all 50 states, the EPA, the
15 Department of Justice Civil Division, the
16 Virginia State Corporation Commission, the
17 Virginia Department of Tax, the county
18 recorder and county taxing authorities for
19 the jurisdictions in which the company would
20 propose to close stores, the governmental
21 units in those jurisdictions where the
22 company operates as well, regional and state
23 and environmental protection authority
24 offices and the state taxing authorities. We
25 also, Your Honor, had provided draft first

1 day papers on Friday to the U.S. Trustee's
2 Office, had an opportunity to meet this
3 morning with Mr. Van Arsdale and Mr.
4 Whitehurst to talk about first day motions.
5 Your Honor, we believe to all the major
6 constituents in this case they have had as
7 much notice as could reasonably be provided
8 under the circumstances and what we believe
9 to be adequate notice for the hearing on the
10 matters we're going to put before the Court.

11 Your Honor, at this time I would
12 like to move admission pro hac Gregg Galardi,
13 Chris Dickerson, Ian Fredericks with Skadden
14 Arps. They are admitted in jurisdictions
15 which they practice and we believe well
16 qualified to practice in this Court.

17 THE COURT: Admissions are approved.
18 Welcome to the court.

19 MR. POLLACK: Your Honor, the
20 people on the phone are having trouble
21 hearing the speakers in the courtroom. I
22 don't know if there is anything we can do
23 about that, but we hear you fine.

24 THE COURT: Very good. I will see
25 if we can't turn up the volume on the phone.

1 We have just moved into a new
2 courtroom, new courthouse, and we don't have
3 all of the audio systems installed yet. So
4 we're still trying to get through that, but
5 we will try to accommodate the people on the
6 phone as much as we can. You may proceed.

7 MR. GALARDI: Your Honor, again, for
8 the record, Gregg Galardi, with Skadden Arps
9 on behalf of Circuit City. Your Honor, I
10 don't know what your practice is to
11 proceed -- I know there is a number of out of
12 state counsel -- whether you would like to
13 have those admission introductions before we
14 proceed with these matters or wait until they
15 stand up.

16 THE COURT: I think we can wait
17 until they stand up because there may be
18 people who want to speak to specific motions
19 and not others. Do you want the people who
20 are by telephone to identify themselves
21 before we proceed with the hearing?

22 MR. GALARDI: That would be helpful,
23 Your Honor.

24 THE COURT: At this point I would
25 like to turn to the people participating by

1 telephonic hearing today and have each of you
2 identify yourself.

3 Mr. Church, would you please
4 identify yourself.

5 MR. CHURCH: Steven Church of
6 Bloomberg News.

7 THE COURT: Mr. Pollack, would you
8 please identify yourself?

9 MR. POLLACK: Good afternoon. David
10 Pollack, Ballard Spahr and Ingersoll on
11 behalf of certain landlords; also on the
12 phone from our Washington office is Chuck
13 Chotvacs, and I know Mr. Galardi can speak
14 louder than he is.

15 THE COURT: Thank you. Ms. Graff,
16 would you identify yourself?

17 MR. GRAFF: Actually, Your Honor,
18 it's Mr. Graff --

19 THE COURT: I apologize.

20 MR. GRAFF: -- on behalf of
21 (inaudible).

22 THE COURT: Mr. Branch, would you
23 identify yourself?

24 MR. BRANCH: Good afternoon, Your
25 Honor. Dustin Branch, Katten Muchin &

1 Rosenman, LLP, appearing on behalf of various
2 landlords.

3 THE COURT: Mr. Hillman, would you
4 identify yourself?

5 MR. HILLMAN: Yes, Your Honor.
6 David Hillman of Schulte, Roth and Zable on
7 behalf of Panasonic Corporation of North
8 America.

9 THE COURT: All right. Thank you
10 and Mr. McJunkin, can you identify ourselves?

11 MR. MCJUNKIN: John McJunkin,
12 McKenna, Long and Aldridge. Along with me is
13 Dan Carrigan. We represent Bethesda
14 Softworks, LLC.

15 THE COURT: All right. Is there
16 anybody on the phone that I have not
17 mentioned?

18 MR. LUCIAN: Good morning -- good
19 afternoon, Your Honor, John Lucian and Regina
20 Kelbon from Blank Rome. We represent Verizon
21 Wireless.

22 THE COURT: All right. Is there
23 anybody else? All right. Thank you.

24 MR. GALARDI: Thank you, Your Honor,
25 and I will try to speak up and not yell at

1 Mr. Pollack. Your Honor, we are here today
2 with respect to the Circuit City filings, and
3 what I would like to do is give Your Honor an
4 introduction to why we are here, what the
5 corporate structure is, and I have three
6 handouts that we would make available to
7 people if I might approach, Your Honor.

8 THE COURT: Certainly.

9 MR. GALARDI: Your Honor, just
10 briefly by way of introduction, Circuit City
11 was founded in 1949 here in Richmond. It is
12 a public company with operation throughout
13 the United States, Canada and Puerto Rico.
14 What I have handed up to Your Honor is three
15 documents, and as we go through today's
16 hearings I find them -- hopefully they will
17 be useful for a person to understand where we
18 are. One is a DIP budget and one is also a
19 timetable for where we see this case is
20 going. The first document is the document
21 that will show the debtors that have actually
22 filed. You should have a document that has
23 white blocks, sort of gray shade and a darker
24 gray shade. The white blocks are the
25 debtors, the shaded ones are non-debtors, and

1 then the dark ones are entities that actually
2 filed in Canada today. We do commence CCAA
3 proceedings.

4 Your Honor, Circuit City Stores is a
5 publicly held company. It has gotten notice
6 of delisting. It has -- everyone knows is a
7 leading retailer of consumer electronics and
8 currently operates over 700 stores throughout
9 the United States, and it has a similar
10 number of stores that it operates up in
11 Canada. Today, as I said, they filed in
12 Canada the CCAA proceeding under InterTan and
13 another one of the companies that is on
14 during this structure is Tormelay (Ph)
15 Corporation filed a CCAA proceeding and
16 actually sought and went over to the judge
17 this morning. I understand we will hopefully
18 have an order entered there they will
19 approve. There is some interplay between
20 orders and financing. We're hopeful that
21 maybe before we finish today they will have
22 an order entered in Canada with respect to
23 the CCAA proceedings.

24 Your Honor, the revenues for year
25 ending February 29, 2008, were approximately

1 12 billion dollars and employed nearly 40,000
2 people. Your Honor, unfortunately over the
3 last two years they have had declining
4 performance and in the last six months ending
5 August 31st, as we reported, they have lost
6 over 400 million dollars. Simply speaking,
7 Your Honor, these losses are driven by two
8 general factors. First, the decreasing
9 margins in the company's operations. They
10 receive less margins on their sales partially
11 because they have chosen before to compete
12 with the internet such as Amazon.com;
13 therefore, in the stores they had lower
14 margins competing with the internet. The
15 second is simply they've lost foot traffic
16 over the last two to three years resulting
17 both from -- I would say general economic
18 conditions are more pertinent perhaps today
19 than two years ago but also customer
20 dissatisfaction. After -- back in January of
21 2008 the company received notice from its
22 largest shareholder they want to commence a
23 proxy fight from Wattles Capital. In May the
24 management agreed to reach an agreement with
25 Wattles regarding the proxy fight and for

1 three new members for the board to be
2 appointed. One is Mr. James Marcum, who
3 currently serves as the acting president, and
4 there were two other individuals who were
5 designated to the board who served on the
6 board through last night and are still on the
7 board today. In addition, Your Honor, during
8 that same period one of the complaints by the
9 shareholders was that the company should be
10 shopping itself and we received an offer from
11 Blockbuster. The company hired Goldman Sachs
12 to pursue that offer from Blockbuster.
13 Unfortunately a transaction was never
14 completed with Blockbuster. Goldman Sachs
15 probably three, four or five weeks ago
16 continued in its efforts to try to find TG
17 partners, equity investors or other people to
18 invest in the company. To date none of those
19 activities have in fact come to fruition.
20 Your Honor, after the proxy contest the
21 company's financial performance continued to
22 deteriorate. The current CEO at that time
23 stepped down and Mr. Marcum, as I said, took
24 on the position of acting president and
25 chairman. Since September, although the

1 company had already initiated various
2 restructuring efforts, at Mr. Marcum's
3 direction the company has been aggressively
4 pursuing various turnaround efforts. They
5 have been well publicized in the media to
6 note a few. First, the company has hired
7 various restructuring professionals to help
8 with the cash flows, to sort of monitor the
9 business and monitor the checkbook and has
10 been searching out alternative forms of
11 financing. Second, the company began a new
12 advertising campaign and initiatives to
13 improve the customer's experience. It used
14 to be the company competed with the internet,
15 Amazon, and, as I mentioned, the margins were
16 lower. So we have one low price now. We are
17 not going as low as Amazon. It is very hard
18 to compete with the internet when you have
19 virtually more in the stores. The company is
20 now one low price, same internet as in the
21 stores, but it is hopefully a higher market
22 product. They have also taken on great steps
23 to try to give the customers a much better
24 experience to try to get the customers back.
25 Customer satisfaction is perhaps at an all

1 time low and they have addressed that. Those
2 activities were announced and began in the
3 month of -- the end of September and
4 beginning of October. The company also took,
5 as it announced in September, a look at all
6 of its assets. In particular the company has
7 had approximately 150 leases which they have
8 not been operating in those stores for some
9 period of time. On an annual basis they have
10 therefore been paying approximately 40
11 million dollars of an annual rent on lease
12 space that they have no longer been operating
13 stores. Some of that was mitigated by the
14 fact that there were a couple of peas in
15 those facilities but none of the subleases
16 were greater than the market rent. They had
17 explored the opportunity to see if they could
18 shop those leases. Unfortunately they were
19 unable to do so. One of the motions, Your
20 Honor, is to finally bring in for the payment
21 of that amount and to reject those leases.
22 In addition, Your Honor, they looked at a
23 four-wall analysis, a very strict analysis of
24 what of the stores that they had, at the time
25 about 175 stores. What are the stores who

1 were best contributors? What markets were
2 the best contributors on an economic
3 analysis. They hired FTI, and FTI did a
4 four-wall analysis, the company did an
5 analysis of markets, and as a result of that
6 the company determined it was best to close
7 those stores and close those markets and no
8 longer operate. Again, one of the topics for
9 the motion, although we started that process
10 prior to the filing, is to seek approval of
11 the agent who is liquidating that inventory
12 and ultimately continue those store closings.
13 That is one of the motions, but that effort
14 was undertaken, begun really in the beginning
15 of October, and we will have testimony today,
16 if Your Honor needs it, with respect to
17 efforts to come to that agency agreement, how
18 we came to that, why it is a fair agreement,
19 what's the benefit of assuming it. But that
20 was one of the efforts undertaken pre-filing
21 again with the hopes to address our liquidity
22 concerns.

23 Finally, I think, Your Honor, most
24 familiar in people's mind, because it
25 happened only last week, the company took a

1 painful step last Thursday and Friday to have
2 a significant reduction in forces at
3 corporate headquarters. The number is
4 approximately 700 people in the company, let
5 those people go last Thursday and Friday as
6 was well covered in the press. Your Honor,
7 during all of this process the company was
8 soliciting offers, and Mr. Besanko can
9 testify as well as the advisors today -- we
10 can proffer or give their testimony. The
11 company has been looking at talking with its
12 current lenders lead by the agent Bank of
13 America. The company currently has, and,
14 again, a sign of a different time, a 1.3
15 billion dollar commitment financing from a
16 group of about 17 lenders, very well-known
17 retail lenders led by B of A, there's Wells
18 Fargo, there's GE, and then depending upon
19 whose bank is financing whose bank at any
20 given time, there are other banks within that
21 group. We started negotiations with them
22 about both out of court financing in-court
23 financing hoping to remain, again, out of
24 court. The company and its professional
25 advisors also went out and solicited a

1 subdebt. Your Honor may bring it up later,
2 one of the draft papers mentioned -- there
3 was a subdebt facility. We will tell the
4 story about why we do not have that facility
5 today. It is not that they walked away from
6 us. It is that we walked away from them. We
7 looked for subordinated debt and again trying
8 to get and solve the liquidity problem.
9 Notwithstanding the above, in light of the
10 quarterly announcement that came out
11 September 29th and the uncertainty in this
12 market created both in the global market as
13 well as the retail market, you can only read
14 the newspapers and see the retailers many
15 times, lenders became quite concerned about
16 the company's financial help. As a result of
17 this we are in the oddest time of the market
18 for retailers, especially an electronics
19 retailer, as we are building up our inventory
20 right -- we should be building up our
21 inventory. We are using more and more of our
22 credit facility. Unfortunately, we would
23 normally get increased trade terms or we
24 would get a higher credit limit from our
25 normal vendors, but given the market that was

1 going on and given the fact that there was
2 press in our quarterly report announcement of
3 400 million dollars lost for six months
4 ending on August 31, what we found happened
5 is after September the company began to
6 deteriorate its liquidity position primarily
7 because, one, vendors were stopping trade
8 terms and demanding cash in advance for
9 shorter terms, and, two, unlike historical
10 limits where we could increase our trade
11 credit with respect to those lenders and
12 therefore build our borrowing base and
13 therefore have more liquidity, we were unable
14 to do so because vendors were no longer
15 willing to go at risk. Again, the
16 traditional bankruptcy would merely remind
17 that we would only take their money, file on
18 January 1st that we were high and dry for the
19 payrolls, and so they decided not -- at least
20 we understand they decided not to continue to
21 give credit support to the company. As a
22 result of that and as a result we just
23 couldn't get enough cost as fast as was
24 necessary. We were required to come into
25 court and seek a filing last night and in

1 particular with the support of Bank of
2 America as it did the lending.

3 We have before Your Honor today
4 various first day motions. What are we
5 trying to establish in this filing? We read
6 the press this morning, Your Honor, and there
7 are experts that are saying, well, we will
8 take the fate of the lending and things of
9 every other retailer, we are going to
10 liquidate. Actually, quite simply we are
11 trying to emerge as a going concern and to do
12 it in one of two ways, and we have very
13 limited time as we talk through this process.
14 We are trying to emerge as a going concern
15 and there two ways that reach Chapter 11
16 allows us. One, a going concern based on a
17 particular sale to all or part of the
18 company. We can explain. It's just that
19 continuation in a different form from Goldman
20 Sachs. And, two, whether or not we can do
21 this is to emerge with a standalone plan
22 hopefully supported by vendors. As we set
23 forth in the Besanko affidavit, and as Your
24 Honor will hear as we go through the case, is
25 prior to the filing -- again, Mr. Marcum took

1 trips to Korea to try to discuss with vendors
2 whether they would support a vendor plan.
3 And the simple message is, Your Honor, the
4 company believes there is a competitive
5 market out there to Best Buy. You don't have
6 to compete with the internet. You provide a
7 valuable service. And if we get vendor
8 support sufficiently, you can have a second
9 outlet for your goods. And there are many
10 vendors that would be very much harmed should
11 Circuit City go out of business. That's one
12 avenue. And, two, though you have
13 significant interest during the Goldman Sachs
14 days, many of those buyers pointed to the
15 fact that we have a real estate portfolio of
16 150 leases that were debt store leases. So
17 we had a different footprint. So the
18 opportunity provided by Section 363, an asset
19 sale in bankruptcy, makes the company more
20 attractive to those bidders. So, Your Honor,
21 we really do hope we can accomplish a going
22 concern and exit from bankruptcy, and we want
23 to do it in very short time frame.

24 Your Honor, the second exhibit that
25 I have handed up to Your Honor, again, it is

1 available to people to give you an idea of
2 the time frame I think to try to set up the
3 whole case before we go to the first day
4 motions. Again, someone would look at our
5 DIP facility and say, my God, they have to
6 have a plan of reorganization done by March
7 and they have to do this, that and the other
8 thing.

9 THE COURT: That was the first thing
10 that stuck out to me.

11 MR. GALARDI: Right, exactly. And
12 why would anybody borrow so much money on
13 such a short time frame? Unfortunately, I
14 have done a number of retail cases, Your
15 Honor, and I would like to blame this one on
16 the banks but I really can't. It is the
17 Bankruptcy Code that actually forces this
18 situation, it seems to me, with the BAPCPA.
19 Your Honor, in a traditional ABL loan what
20 the ABL lenders are obviously concerned about
21 is their primary collateral is the inventory
22 in the stores. If your primary collateral is
23 the inventory in the stores, you get an
24 appraisal for inventory in the stores, and
25 the appraisal is based on the simple fact if

1 you have to liquidate, an order of
2 liquidation, how much can you get for that
3 inventory over a certain period of time.
4 That appraisal predicts essentially it will
5 take 9 to 12 weeks to liquidate the inventory
6 in the stores. If you take the timeline,
7 Your Honor, then the bankruptcy code overlay
8 of that is simply the following: as the
9 debtor you have your first 120 days to assume
10 or reject leases. You can get one extension
11 for 90 days, and if you get the 210 days to
12 assume or reject leases, you've got as long
13 as you can get unless you get in this
14 instance another 500 landlords to consent to
15 further extensions. So what you have is if
16 you take 210 days as the longest period, what
17 you find -- and I now have three or four
18 cases of this sort. Well, if you start
19 backwards from 210 days and it takes three
20 months to liquidate the inventory, well,
21 that's seven months minus three months and
22 you have a four month case because no retail
23 debtor is going to start assuming leases
24 until they know where they can exit because
25 the obvious implication is you have now

1 converted the cure claims. You have to make
2 administrative claims. So the time frame is
3 really not set by, I think, the lenders,
4 although I understand their concern and we
5 would love to have more time. It is the
6 Bankruptcy Code that really sets the 100, 210
7 days. So what you will see in a timetable
8 that we have proposed is where we see a
9 significant event over the course of this
10 case, Your Honor, is though we have the first
11 120 days -- you have 120 days, you take three
12 months. We have one month really to get a
13 new order in this case. So we will be filing
14 a motion which is not unheard of anymore but
15 it may not be usual for retail cases to
16 extend the 365(d)4 deadline the first month
17 of this case because if we don't, then the
18 lease reserves kick in. So you will notice
19 the first real deadline here is by December
20 10th we will have to have an order that will
21 allow us to go through the two to take
22 advantage of the full 210 days. The
23 landlords' counsel in the room have been with
24 me before on these matters, Mr. Pollack and
25 Mr. Hayes. They understand that's what we

1 will be doing and we will have a negotiation
2 over that, but it is critical to these
3 debtors that they get that extension and so
4 we will have a hearing on that. In addition,
5 Your Honor, the critical deadline is the
6 utilities. A company that has this many
7 leases has thousands and thousands of
8 utilities. The Bankruptcy Code again has
9 made it very difficult on retail companies
10 because you have the choices of either put up
11 and then get back or not put up. So what
12 we've done, and we will talk about this in
13 the first day motions, is we will make an
14 offer but we really need a hearing on that
15 first 30 days to have Your Honor set the
16 adequate assurance of future performance. I
17 know the gentleman who will probably be here
18 from this area, Mr. Russ Jones, will send me
19 my e-mail and tell me I won't accept this,
20 and we understand we will have to deal with
21 that but we normally resolve it. But that's
22 another thing that puts an incredible burden
23 on the retail lender. Again, the lenders now
24 have stipulated this is not an uncommon
25 deadline. They have actually given us in the

1 area of 40 days or 45 days to get the final
2 order on the debt. So that is a very
3 standard motion.

4 Again, Your Honor, as we go through
5 the cash flows, the other requirement that
6 you will see is we think we have sufficient
7 liquidity, which was a hotly negotiated
8 issue, to make it through Black Friday back
9 through January, but there is a January 7th
10 requirement that we obtain 75 million dollars
11 in term loan debt, essentially a second lien
12 facility to give us additional liquidity. As
13 I see the case, Your Honor, we have a 60 day
14 period, another 60 day period, and then we
15 can maybe get to Christmas. That's really
16 what we are looking for. So if you think of
17 it this way, go through the Christmas period
18 to January through electronic retailers and
19 then you have to go through Super Bowl. So
20 you have to get liquidity again, buy the
21 goods to get through the Super Bowl, which is
22 February 1st this year, to get us to March.
23 We think that whether we to do this -- and it
24 will be a topic of the motion -- to really
25 get this subfacility with a lender such as

1 the one we mentioned in the first day papers,
2 or another lender, or even a 363 purchaser,
3 is a very likely possibility and we're
4 hopeful. But, again, to get that kind of
5 facility most people will want to see how did
6 you do during Christmas. And so we thought
7 it would be better not to take the first loan
8 that we talked about because it wouldn't have
9 gotten us to that point, but rather, again,
10 with B of A's cooperation managed to secure a
11 period of January 17th so we have what we
12 think is a good 60 day period to do the sort
13 of things we need. Your Honor, then the
14 dates sort of fall in line because it will
15 need to file a plan disclosure statement by
16 March 1st. That's right within that four
17 month time period I'm talking about. Indeed
18 we think that it is not just that you file on
19 but we will actually have to come into the
20 court and be prepared to confirm a plan
21 somewhere in that March 1st, March 15th
22 period because when we resume the leases the
23 leases will have to be assumed or effective
24 or otherwise we face the next date which is
25 March 15th which is the lease reserve date.

1 And what that essentially says is if you
2 haven't come up with an exit for this
3 bankruptcy case, then they are going to force
4 us again to protect their collateral as their
5 right to do, to send out informational
6 packages, to liquidating it, to come up with
7 a 363. It's a bridge to somewhere. That's
8 how I see the case, a four month bridge to
9 somewhere. Again, the last day on the
10 calendar is simply Your Honor grants us that
11 extension of the 90 days, then the date would
12 actually run out on June 10th, and that's why
13 three months later we need to get the leases
14 determined.

15 Your Honor, moving off the calendar
16 -- again, to see this case I think is to see
17 it as two bridges. The first bridge is to
18 give us enough time to solicit interest
19 either from third parties or from the vendor
20 community. The second thing, in July to
21 hopefully come back to this Court with either
22 a vendor supported plan, a vendor supported
23 financing, which we have been starting
24 negotiations with, or a subdebt facility from
25 some other party or a subdebt facility from a

1 potential purchaser that will allow us to
2 exit in the March time frame. That is the
3 company's hope and goal for these cases.

4 Your Honor, moving then to the first
5 day papers, I think we will just go in the
6 order. What I have done is I -- hopefully
7 this will be helpful to the Court and people
8 in the courtroom. I handed out a one-page
9 budget which I'm often teased about, but we
10 hand out a one-page budget which will
11 hopefully show the first 13 weeks of the case
12 and will match up to the relief requested.
13 If you think the print is small now it gets
14 even smaller as I get longer in the case and
15 then we will put it on two pages, but most
16 people complain I can read small but I can
17 read you very well. So it is easy for me to
18 read the small print. Your Honor, just to
19 give you a sense of this budget, we start on
20 the week one and we said here -- we have said
21 here we have broken it down essentially to
22 mere operating expenses or cash flows which
23 is an item two. The first item is a
24 significant one, Your Honor. It is an
25 assumption about how this market is going to

1 operate and comp store sales. Notice it is a
2 scary number. It is off 35 percent. It is
3 off 30 percent. It is off 25 percent. It is
4 off 20 percent. So we think we have taken a
5 conservative assumption, but no one can
6 predict in this market and what people are
7 saying about retail that even a negative 35,
8 30, 25 is conservative enough. And with a
9 company this size there can be significant
10 variation. But that is the assumption about
11 our performance over this 13 week period.
12 Importantly and not in here, Your Honor, is
13 through the week of January 3rd we assumed
14 absolutely no trade credit, CIA. It is our
15 experience and hope to be able to negotiate
16 trade credit and then beginning on the week,
17 I think, of January 10th very little trade
18 credit comes in because we hopefully will be
19 in the negotiating phase and getting some
20 trade credit.

21 The next -- in the cash flows then
22 we have what I call the bankruptcy payments,
23 and, Your Honor, those titles should seem
24 familiar to the first day papers as we either
25 -- each tagged to the amount of relief that

1 we sought in certain of our first day papers
2 by way of any number of arguments, these
3 doctrine of necessity secured claims,
4 whatever, but they are broken down into
5 customer practices, freighter shipping,
6 insurance, mechanic's liens, foreign vendors,
7 and then my favorite, the other one. And we
8 will talk a little bit about the other, my
9 pledge factor.

10 Your Honor, what I think is striking
11 is the next column. It is a column that says
12 how much is this DIP facility going to cost
13 us, all in when you pay the professionals
14 that negotiated it, when you pay the banks
15 the fees and when you pay the lenders'
16 counsel its fees, we have listed here 34
17 million dollars. Your Honor, it is actually
18 probably two or three million dollars less,
19 not more. So we're better. We did put in
20 the number. We've done the calculations. It
21 is probably closer to 30 million dollars over
22 all. So as I said to my board, we said -- I
23 want the Court to understand and I want you
24 to understand we're paying 30 million dollars
25 with 50 million dollars of additional

1 availability over this period of time. Now
2 that's an oversimplification, but I think it
3 is a stark point that Your Honor has to hear.
4 Now we can give you all the other reasons why
5 we're getting covenant relief, we're doing
6 these things and that thing, but at the end
7 of day we are putting in basic economics.
8 You say I want to put 30 million dollars to
9 get 50 to buy the bridge to an exit. We
10 think it is all worth it because our
11 alternatives are not, and, as the experts
12 will testify by proffer or directly, there
13 was no other option but to take this or
14 liquidate, and liquidation was not good for
15 anyone as we have determined.

16 Your Honor, next to the other budget
17 -- and I point this out because we are not
18 seeking approval of something of this budget,
19 but I do want Your Honor to understand that
20 there are two columns that will talk about --
21 under the other line there is employee
22 termination cost and employee incentive
23 plans. Your Honor, we are not seeking
24 approval for any employee incentive plan
25 today or any employee severance or other

1 costs. The employee motion as we go through
2 it -- we stripped it down fairly
3 significantly to pay the basics. We do
4 believe we have one controversial issue that
5 we pointed out in a revised motion that we
6 will take up today. But other than that we
7 think we have determined it. We are not
8 paying severance right now. We're leaving
9 all of that for the discretion committee to
10 be formed. We are therefore only paying
11 those expenses to be necessary and in all of
12 our motions to avoid immediate and
13 irreparable harm.

14 Then, Your Honor, we can see that
15 the low balance as of today is about 756
16 million dollars. And that's an estimate.
17 Your Honor, the DIP facility here is -- I
18 don't think is unique anymore in the market,
19 but it is one people can question in the
20 following way: we are seeking -- whether you
21 call it a first day role of the entire
22 facility to convert into post petition debt
23 or as you see it as a new facility taking out
24 the old facility, the fact of the matter is
25 if Your Honor approves that facility today,

1 the company will lose bankruptcy rights. It
2 will lose its right to cram down, for
3 example, or cram up the secured lenders. It
4 will lose the right to reinstate those debts.
5 It understands that. It is asking to take
6 the full amount of loan, pay the loan down
7 and then start going forward. The ironic
8 part, Your Honor, and I think the media will
9 pick this up but it's worth the finance,
10 although we are reducing our commitment from
11 1.3 to 1.1 down to 900 eventually, we are
12 actually increasing our availability. That's
13 just the way an ABL loan works. If you don't
14 have enough inventory and goods to get up to
15 that cap, you are never going to borrow the
16 1.3. We don't have that. We are not going
17 to get up to the 1.1 or the 900 as you see
18 through this model. Nonetheless, what we
19 have gotten to an advantage is we're able to
20 use available collateral again through Bank
21 of America the Canadian assets. So we get a
22 better borrowing rate which gets us to
23 greater liquidity which gets us to 50 million
24 which we believe will get us to that January
25 date. Again, we can also think of it simply

1 -- if we jettison all the stores we have
2 jettisoned, you don't need a bigger facility
3 to put in as much inventory. Again, that may
4 be an after thought as to how you describe
5 it. The fact of the matter is we don't have
6 the capacity to borrow that. It is not a bad
7 sign that we are losing our commitments or
8 they are being reduced. It is an economic
9 advantage for lenders and it's one of the
10 quid pro quo for getting this many
11 facilities, but I think the message here is
12 we're getting additional availability.

13 Your Honor, again, at the very
14 bottom of that budget -- I point this out
15 because it becomes a topic of the first day
16 papers -- you will see that we have put in
17 what we call a utility reserve. As the code
18 has changed through 366 there is a, you know,
19 give the money, we come up with what I will
20 say is a somewhat creative way of dealing
21 with it by making an LC landlord and then
22 they can come in and object and we'll
23 resolve, which gets me back to my other
24 budget. Your Honor, we have set the LC
25 reserves as we said in the first day motions

1 by two weeks. And Your Honor knows as
2 practice, most regulatory agencies say you
3 can ask up to two months. Once you are a new
4 debtor, if you have no credit history or if
5 you have a credit history and it is a bad
6 credit history, they ask for a two-month
7 security deposit. The truth lies somewhere
8 between two weeks and two months. Probably
9 that other line frankly, Your Honor, is our
10 ability to negotiate settlements at something
11 between that two weeks and less than -- less
12 than two months, far less than two months,
13 hopefully at two weeks, and that's how we use
14 the other line. So it is not that we have
15 some slush fund to use. It would be part of
16 the authority that we are seeking Your Honor
17 to approve today.

18 Your Honor, I think that goes
19 through the budget. Now, again, I will come
20 back to the DIP, but I can move on to the
21 basic first day papers if Your Honor would
22 like to do so. Your Honor, I heard 24
23 motions. I think I lost count because I have
24 an agenda that's 22. Maybe there is a couple
25 of ad hocs of 24 -- okay. I'm not sure which

1 ones. So if I miss one, let me know where I
2 am.

3 THE COURT: On the Court's calendar
4 there were 23, but we have already taken care
5 of one which was the motion for you to appear
6 pro hac.

7 MR. GALARDI: Well, I'm glad that
8 that one was granted, Your Honor. I think we
9 can move. I didn't have my own appearance
10 on -- I have not yet moved my pro hac vice.
11 Your Honor, the next motion on the agenda is
12 the motion under 105 to set an expedited
13 hearing today. I don't know if Your Honor
14 has approved that.

15 THE COURT: That is approved.

16 MR. GALARDI: Thank you. The next
17 matter, Your Honor, is waiting requirements.
18 It is the joint administration motion.
19 Again, Mr. Besanko has set forth in the
20 affidavit, as Your Honor can see from the
21 corporate structure, each of the entities
22 that filed affiliated in either direct or
23 indirect subsidiary or wholly owned
24 subsidiary. Your Honor, it is not subject to
25 consolidation. It is very clear for

1 procedural purposes. I don't know if Your
2 Honor has questions or need anymore
3 information on that motion.

4 THE COURT: I have read the papers.
5 I don't have any problems with it. It would
6 be quite normal to proceed with it in this
7 fashion.

8 Does any party present want to
9 object to the joint administration? All
10 right. That motion will be granted.

11 MR. GALARDI: Your Honor, the next
12 motion is the motion to approve the
13 application of a claims noticing agent. I
14 don't think Your Honor's Court nor we would
15 want to take on the noticing burden that will
16 be here. We have sought to retain Kurtzman
17 Carson Consultants. They have done many
18 large cases for our firm and many other
19 firms. They are listed in those matters.
20 They do the claims. They do the noticing.
21 They have a website. People can find out the
22 claims. They will do the process of posting
23 our papers, and then ultimately when we come
24 to soliciting acceptance or a rejection of
25 the plan of reorganization they will

1 hopefully serve as balloting agent for this
2 purpose because they will have the claims and
3 classifications. I don't know if Your Honor
4 has questions about that motion.

5 THE COURT: Again, I reviewed the
6 papers. I find them to be in order.

7 Does any party wish to speak in
8 opposition to the motion? That motion will
9 be granted.

10 MR. GALARDI: Your Honor, I'm now on
11 number five, I believe, on my agenda. It is
12 the motion for the debtors to set various
13 notice of case management and administrative
14 procedures. Your Honor, it is what I
15 understand to be a fairly standard motion in
16 this jurisdiction. I think the only thing
17 that would need to be filled in, and maybe we
18 can come back to this at a certain point, is
19 dates for omnibus hearings would be set. I
20 gave in part the calendar to sort of talk
21 through that. I don't know if Your Honor's
22 preference is whether to try to set those now
23 or wait and come back to that at the end of
24 the hearing. I think there is nothing else
25 that's controversial in that motion. Unless

1 Your Honor has questions, I would ask to be
2 granted.

3 THE COURT: Any parties want to
4 speak in opposition of the motion? It will
5 be granted.

6 Why don't we come back at the end of
7 the hearing and set the dates because of some
8 of the other motions we'll need to take into
9 consideration when we set those dates.

10 MR. GALARDI: Thank you, Your Honor.
11 Your Honor, the next motion is the debtor's
12 motion. Again, these are administrative
13 motions whereby they want to prepare a list
14 of creditors and we will submit a formatting
15 or mailing matrix, file a consolidated list.
16 As the debtors we filed the 50 largest
17 creditors. Again, KCC is in their matrix and
18 sending the notices. I think it is fairly
19 standard. We prepared the top list, and we
20 will be filing schedules and statements
21 against, again, with our aggressive schedules
22 with plans and disclosure statement and then
23 we set bar dates. We will be doing that as
24 fast as we possibly can. We ask Your Honor
25 to grant our motion number six.

1 THE COURT: That motion will be
2 granted.

3 MR. GALARDI: Your Honor, moving
4 down to number seven -- and I will now say
5 I'm into what I'll call the business
6 operation motions. Again, I think I sort of
7 see these as going from administrative down
8 to business operations, from fundamental to a
9 little bit more controversial depending upon
10 what jurisdiction you're in. Your Honor, the
11 next motion is motion number seven. It
12 really seeks four forms of relief. One is to
13 authorize the company to continue using its
14 existing bank accounts; two, is to use
15 existing business forms, although it is hard
16 to say in this internet age how much you
17 actually have to check in the non-debtor
18 possession but I'm sure we have some. So I
19 think we sought to continue to use the stock.
20 More importantly and the most important is it
21 is actually required by the DIP which is to
22 continue our cash management system in that
23 payment, the checks and balance. We have a
24 very complicated graph of disbursements. But
25 essentially, Your Honor, all the money comes

1 in and goes out to Bank of America and it's
2 re-lent all in the same day and goes out to
3 the disbursement accounts. We have a number
4 of separate disbursement accounts which will
5 pay down the loan we borrowed again for the
6 most part under this facility. Again, it is
7 automated, electronic. The company, for
8 example, can tell me one day or two days
9 later, well, how are the sales going in those
10 GOB stores. At the store's closing they can
11 tell me the sales are up 200 percent. It
12 would be very difficult for Mr. Besanko
13 himself to try and change that. In addition,
14 Your Honor, we have an intercompany that we
15 would like to be able to pay some money out
16 of the debtors estate and the banks have
17 agreed to this to a Hong Kong facility
18 intercompany. That is a servicing agent. It
19 helps us to get contracts with our foreign
20 vendors abroad that don't have -- that are
21 not in this jurisdiction for doing business.
22 It is a small amount of money. It is
23 essentially to payroll for those people
24 working there. Again, the banks have
25 consented to that. It is money that goes out

1 of the system. We would ask Your Honor -- if
2 Your Honor has questions about it, I don't
3 think I can to tell you every bank account or
4 every disbursement account, Your Honor, but I
5 can tell you Mr. Besanko has control over
6 those funds, understands where the funds
7 flow. If we were in the treasury department,
8 we would have to face substantial
9 difficulties if we were actually to try to
10 belie closing accounts, opening accounts and
11 different accounts. It would also be a
12 default under our DIP document and they are
13 comfortable in our system. I don't know if
14 Your Honor has any questions about that.

15 THE COURT: Any party wish to speak
16 in opposition to this motion?

17 The Court did have one question with
18 regards to the order that you sent us.
19 Apparently what I would see as a
20 typographical error as it appears on Page 6
21 at the bottom, paragraph nine is not finished
22 in the form order that was submitted to the
23 Court.

24 MR. GALARDI: I think we submitted a
25 revised one for exactly that reason. We

1 noticed that this morning. What we can do is
2 get you a copy of a new order and obviously
3 Your Honor can review it, and if it meets
4 Your Honor's approval we can submit that.

5 THE COURT: Thank you. With that
6 change, that's approved.

7 MR. GALARDI: Your Honor, the next
8 motion is a motion for interim and final
9 orders of waiving of the investment and
10 deposit requirements. Again, the Bankruptcy
11 Code under Section 345 makes sure that we put
12 our investments in safe investments. We --
13 ordinarily because we think that the banks
14 are safe and generally in this instance
15 because it is a very much revolving line,
16 it's actually -- as I was talking with the
17 U.S. Trustee -- don't believe it is really
18 our money. It goes down and we borrow it.
19 So it's really in their possession.
20 Nonetheless, as the U.S. Trustee pointed out,
21 Bank of America, Wachovia, I believe, were
22 already collateralized companies. So to the
23 extent we're going to get any relief on the
24 interim relief we will -- we do in turn have
25 to let the U.S. Trustee know about the bank

1 accounts. It is without prejudice for them
2 to get comfortable that either they need
3 these collateralization agreements or they
4 don't, but I think on an interim basis they
5 are content, and we'd ask for Your Honor to
6 waive them on an interim basis and come back
7 on a final hearing if someone should, in
8 fact, object to our continuing to be free
9 from the burden of 345.

10 THE COURT: Anybody wish to be heard
11 on this motion? Okay. That will be granted
12 on an interim basis. That would be one of
13 the hearings, I assume, you will need to set
14 as part of an ongoing series?

15 MR. GALARDI: Yes, Your Honor. As
16 we now get into that, that's a perfect
17 introduction to the next set of motions.
18 Again, it is my understanding and generally
19 my practice, Your Honor, that notwithstanding
20 the fact that I haven't styled the rest of
21 these first day motions where I have what I
22 will call the bankruptcy payments, that
23 notice being what it is is not absolutely
24 perfect on one day. So -- and we have tried
25 to reach out to people we think would be on

1 the committee. My understanding is there
2 would be pretty much interim relief and we
3 would probably talk with the U.S. Trustee
4 again in the spirit of irreparable damage or
5 harm notwithstanding the fact we are getting
6 relief. What I would suggest with respect to
7 relief -- and we will talk about each one.
8 There is only one thing when it comes to the
9 employee one that I would like that to be
10 interim. Otherwise with respect to the
11 motions, my understanding is it would be
12 interim, it would change the orders out, it
13 will send what I call a negative notice
14 deadline. If you object, we'll come back to
15 the first omnibus hearing. And if you don't
16 object, it automatically goes final.

17 THE COURT: That would be the
18 Court's preference.

19 MR. GALARDI: Okay. That will work
20 because our budget, again, Your Honor,
21 assumes the number of payments. Obviously we
22 are not going to push all the money out
23 because I know Your Honor has read this -- we
24 are authorized but not directed to make all
25 of these payments. So just because it is on

1 the budget we have a disbursement covenant.
2 We want to make sure we satisfy that. There
3 is not one's entitlement to any of this
4 money. We will be negotiating as best we
5 can, but I think it is a good way to have us
6 come back to the Court again and put more
7 fine print on it where we stood actually if
8 someone wants to object to where the
9 committee comes and says I don't think you
10 should be making these payments which will
11 not prejudice their right on a subsequent
12 hearing. So with that said we can make the
13 orders all have the kind of language that I
14 said, the negative notice, and we'll talk
15 about a date for objection and at the hearing
16 if there is an objection we will come back.
17 I think that makes the U.S. Trustee more
18 comfortable, and I assume it makes the Court
19 more comfortable.

20 THE COURT: It does.

21 MR. GALARDI: Your Honor, with
22 respect to the employee motion, I think that
23 a few things that want to -- one, I think it
24 is a fairly standard motion with maybe two
25 caveats. First, with respect to the

1 employees we seek to pay wages, salary and
2 the ordinary health benefits. Your Honor,
3 there is no one in this group that -- and our
4 last payroll, I believe, went out -- it was
5 either October 29th or 30th, and so, Your
6 Honor, we are actually coming up on -- the
7 next payroll would be next Wednesday. This
8 Wednesday we will fund. There are no
9 employees to our extent if you take the
10 strict wage and salaries that are over the
11 10,950. So we are asking the approval of
12 that. With respect to -- now if Your Honor
13 takes also benefits, we have asked for a
14 number of things which we think would be a
15 hardship if Your Honor does not approve. In
16 particular we have employees that are
17 relocating. So we have asked for relocation
18 expenses. We have asked for business
19 expenses. If they didn't get in their Imex
20 bill on time, it is a hardship to burden them
21 with that. We are asking Your Honor to be
22 able to reimburse them. We are asking Your
23 Honor to reimburse -- we have the position --
24 their health cost, those, Your Honor, are
25 fairly straight forward relief that we have

1 obtained in many courts. Let me say the
2 hardships that we have put the employees on
3 -- we have terminated with respect to
4 retirees programs. We are not making
5 payments to retirees given the financial
6 budget that we have. It is just an
7 unfortunate fact between paying retirees
8 additional benefits versus having money to
9 run the operation, which I have described as
10 a 60 and not 120 day case. We've decided to
11 terminate certain of those funds. In
12 addition, Your Honor, we are seeking again
13 for employment moral issues to continue the
14 401(k) match for the time being, the
15 company's share of the 401(k) match. What we
16 have stopped, Your Honor, and what we are
17 going to encourage employees to make a
18 decision about, we have a supplemental 401(k)
19 program. The company has a match to that
20 supplemental 401(k) program and the employees
21 have to opt for tax benefits at the beginning
22 of the year to continue to make those so they
23 get tax benefits. Unfortunately, Your Honor,
24 that's a funded plan that's in a Rabbi trust.
25 I'm not sure if Your Honor understands that

1 that's subject to the claim of general
2 creditors. So at the very least the company
3 decided we will terminate -- we can do this
4 fix -- terminate our contribution to that
5 supplemental 401(k) as soon as possible,
6 meaning today. With respect to the
7 employees, unfortunately -- and we've tried
8 to figure out how to stop them from making
9 those contributions. We have decided to let
10 them have that election to do that. However,
11 that could have tax implications if they do
12 so. So they will have to pick between paying
13 money into a trust that will be subject to
14 the claims of unsecured creditors or taking
15 the tax implications. We tried to explain
16 that to people but that was the best we can
17 do under the plan, and so we have asked for
18 authority and the board approved last night
19 to give them that option. But what we also
20 did, Your Honor, is we're not allowing them
21 to make an election for 2009. That, we could
22 do. So that will stop in 2009. It is just
23 an unfortunate fact that you can't stop for
24 the employees the contribution, but we will
25 try to get them and tell them to advise their

1 tax advisor. That was one thing we
2 terminated. We also terminated, Your
3 Honor -- and this we can do -- is we
4 terminated the company's stock purchase plan
5 which the employees can do as a regular
6 payroll. So instead -- and they elected to
7 do this -- and, again, Your Honor, we are in
8 a public company. So we can't simply say,
9 before we filed, stop this, we have
10 information. So we have done that because we
11 don't -- unless the employee wants to go out
12 in the market and buy the stock we think it
13 is time to terminate that and not any longer
14 have that. We have information that they
15 don't have it and we don't want to have them
16 deduct for payroll for future stock
17 purchases. So we have terminated that. Your
18 Honor, there is a list of programs that we
19 have also changed. It is histrionically the
20 case that the company has got -- the
21 employees got paid time off, and if they left
22 and they had paid time off, they would get
23 that payment. We have changed the program
24 such that if you leave the company you do not
25 get a cash payment for the paid time off.

1 Again, it is an unfortunate fact, but given
2 our liquidity situation we have decided to do
3 that. That said, those people will still be
4 able in the ordinary course of business to
5 use their paid time off as if we had not
6 filed Chapter 11. So if they have vacation
7 time, and subject to the needs of the
8 company, and they can take that time off,
9 they can use it and be paid for that paid
10 time off in the ordinary course. And the
11 difference between paid time off and vacation
12 is it just covers -- whether you have a
13 family day or vacation day or sick day we
14 don't ask the reason. We give you a certain
15 amount of paid time off. Employees are still
16 allowed to do that. Again, you just can't
17 take the next month off. Obviously it is
18 subject to the needs of the company. Your
19 Honor, we have a severance plan which we have
20 made no determination, but obviously, Your
21 Honor, under the circumstances it would be
22 difficult for us to get approval ultimately
23 on a severance plan, but, again, I have put
24 money in the budget to talk about what we are
25 going to do. It is a committee issue, not a

1 today issue. So we have essentially punted a
2 number of what I will call the other benefits
3 for another date to come back without -- we
4 reserve all rights to come back to the Court
5 to ask for that.

6 That then brings us to probably the
7 most unfortunate, controversial part of that
8 motion. As I mentioned in my opening
9 statement, Your Honor, on Thursday and Friday
10 we terminated nearly 700 employees at the
11 corporate level. Since it is a one location,
12 Your Honor, we gave them a 60 days Warn Act
13 notice. The Warn Act says you have to give
14 notice and essentially your termination is
15 effective 60 days before or you would have to
16 pay the person back wages if you didn't get
17 the notice. Again, we gave the notice saying
18 you would be terminated 60 days hence.
19 Notwithstanding that fact, Your Honor, there
20 are two cases which we cited in our amended
21 motion that have taken under BAPCPA the case
22 that says -- well, under BAPCPA you're going
23 to have to still show administrative expenses
24 under 503(b)1, and clearly we have laid off
25 these employees. We have no intention at the

1 present time to recall them just to work. It
2 is a head count reduction. So I can't stand
3 before Your Honor and say we are going to get
4 a post petition benefit from those people in
5 particular. The payroll that that accounts
6 for is roughly 1.1 or 1.2 million dollars a
7 week. Your Honor, based upon just general
8 -- the mood at the company, the employee
9 moral, the need in the community, the company
10 determined after seeing that it had in fact
11 this option, that we would still like to pay
12 the payroll to those people for the next
13 eight weeks. That said, Your Honor, as I
14 described to the U.S. Trustee in that -- and
15 one of the reasons that we think it is
16 interim relief is we understand that there
17 could be -- we're not going to be -- we will
18 be supporting the employees to get them their
19 wages. We don't have a severance plan as I
20 mentioned. We sort of suspended it. At the
21 very least, Your Honor, in thinking about it
22 what we have decided to do is ask Your Honor
23 to have the relief to continue next week the
24 payroll. It would be one thing to send them
25 home Thursday and Friday telling them you

1 have a paycheck coming and, oh, by the way,
2 we filed on Monday morning and now you have
3 no paycheck. I think that would be
4 devastating to the community and devastating
5 to the morale of the company. And after
6 talking -- and again Mr. Besanko can testify
7 to this -- we have asked for authority to
8 continue the payroll. That payroll number is
9 in our payroll numbers in the DIP budget. It
10 is in every form of DIP budget that -- we
11 haven't highlighted it as a separate line
12 item but up in the operating expenses the
13 payroll is there for the benefit of those
14 people who have always been there. We
15 happened to find a case that came out two and
16 a half weeks ago that says we didn't have to
17 do this, and, again, we have been working
18 very hard with the employees to make sure
19 this is a smooth landing. Indeed they were
20 very encouraged, notwithstanding being laid
21 off, and frankly very positive about the
22 company and the steps the company took. So
23 we just couldn't see a good reason other than
24 saving money, but it is a significant amount
25 of money, other than to pay them. So with

1 that we would ask Your Honor, again, on this
2 one part of the relief, that Your Honor
3 approve that we continue to pay the payroll,
4 but, again, it could be visited by the
5 committee two, three weeks from now and if
6 the committee wants to object to it, we will
7 defend it and they will be the person
8 objecting to so we can do the payroll.

9 THE COURT: That would be
10 retroactive relief. That would be continuing
11 it out through the Warn Act period?

12 MR. GALARDI: Correct, Your Honor.
13 Again, our view would be, you know, see it as
14 a two week notice sort of provision. That's
15 the worst it would be if they got cut off.
16 Again, the company feels strongly that we
17 should have the eight weeks and it should be
18 a moral issue. Again, to put it in further
19 context we have the store closings. We are
20 giving people warn notice there. They just
21 happened -- they got the notice prebankruptcy
22 but they are still working post bankruptcy.
23 So they are going to get the 60 days in any
24 event because the case doesn't really apply.
25 They have provided a benefit and the

1 termination does not. So there will be
2 disparate treatment of our employees. So
3 just because we could not have them not
4 operate the store, it all seems unfair to us
5 do that. So, again, the company felt very
6 strongly, and Mr. Besanko is in the
7 courtroom, could talk about the employee
8 moral in those matters, but we have sought
9 that relief. Again, at the very least we
10 would like to come back on an interim basis
11 and let the committee look at it. We didn't
12 think it was fair to ask for the full relief
13 but the company's intention is to pursue the
14 entire eight weeks.

15 THE COURT: All right. Very good.
16 Does any party wish to speak in opposition to
17 this motion? All right. The motion will be
18 granted and the Court will -- with the
19 proviso that the terminated 700 employees --
20 that would be on an interim basis to give the
21 community an opportunity to come in and
22 object if they wish to do so.

23 MR. GALARDI: Your Honor, what I
24 think we will do is we will do an employee
25 order and make it specific. I think we call

1 them the warned employees in our motion. So
2 we will say interim relief with respect to
3 the Warn Act and you will have X period of
4 time to object to that and we will come back
5 and set a hearing. I don't want the rest of
6 the employees stuff to be seen. Again, they
7 have --

8 THE COURT: I understand exactly
9 what you are saying. That will be -- that's
10 not interim relief. That is -- it will be
11 approved today.

12 MR. GALARDI: Thank you, Your Honor.
13 Your Honor, the next matter is a fairly
14 standard motion to pay prepetition sales use
15 and trust fund taxes. Again, there are
16 disputes as to whether these are priority
17 claims, whether secured claims, whether they
18 are even property of the estate. The U.S.
19 Trustee's Office wants us to pay our taxes.
20 Most people want us to pay our taxes. We
21 don't want to incur any interest or other
22 payments on it. Again, a lot of it is not
23 even property of the estate. We seek the
24 relief, Your Honor. It is basically up in
25 our standard operating expenses. It is more

1 of an accident of timing than it is that we
2 have not paid these things at any given time.
3 It would be hard to decipher what is pre and
4 post, and we would ask Your Honor to approve
5 our continuation of plain sales, use and
6 trust fund taxes. Again, there are often
7 personal liabilities associated with failure
8 to pay them. If you don't pay them, there is
9 also an administrative issue at the end of
10 the case if you've left them out for such a
11 long period of time. We rather not face
12 those issues. They are secured. They are
13 priority. So we would ask Your Honor to
14 approve the sales use and pay trust fund
15 taxes.

16 THE COURT: That motion will be
17 granted.

18 MR. GALARDI: Your Honor, we now get
19 to my procedural motion that is with respect
20 to Section 366. Your Honor, as I described
21 at the outset the company obviously has 700
22 and some stores. We are seeking relief with
23 respect to the utilities. Under Section 366
24 as amended the process is essentially that
25 the debtors have to make a proposal within a

1 certain period of time. I believe it is 20
2 days. Then what a utility can do is say is,
3 no, I don't like that proposal, and then you
4 have to give the utility -- if you haven't
5 resolved that issue on the 30th day, you have
6 to give the utility what it requests. To
7 take account of that and not have all the
8 money go out the door and have to pull it
9 back and have all of those fights, what we
10 have to devise is a motion which has been
11 approved in number of jurisdiction whereby we
12 set up first day and we say here's what we
13 are prepared to give the utilities. We are
14 prepared to give the utilities the right to a
15 blocked account at the Bank of America that
16 is a separate, segregated fund of 5 million
17 dollars. We give them a form very much
18 styled in a letter of credit form that says
19 we say you're in default. We draw the
20 amount. Bank of America, just like an LC,
21 has to not inquire whatsoever. Whether
22 there's a default or there is not, it pays
23 it. We then, like a wrongful draw on an LC,
24 we would go back and say now that was wrong
25 but then our dispute is with the utility if

1 they make that wrongful draw. We think that
2 amount of fund, two weeks for all of the
3 utilities at 5 million dollars, is
4 significant. So we think we have given them
5 adequate protection. It is the other
6 security element of 366. Notwithstanding
7 that, Your Honor, they don't have to accept
8 it and that's what 366 says. So what we try
9 to do is to say, okay, if you don't have to
10 accept it, we need you to come in and tell us
11 what form of your security we would like. We
12 set a deadline to do so and we ask Your Honor
13 to have a hearing before that 30th day so
14 that we can resolve it. Again, money doesn't
15 go out the door only to come back in because,
16 Your Honor, if that's two weeks and you
17 really need two months, you are talking 20
18 million dollars and that puts this case into
19 no availability in the first weeks. Also,
20 Your Honor, we have 155 stores and we have to
21 pay utilities to all of them and we have to
22 be out of them by the end of December. We've
23 paid them in advance for all of those months
24 and then we have to come back. So we'd like
25 to deal with that one on one. We don't think

1 that this prejudices the utilities because
2 they still have all of the state law rights
3 and they can still ask for two months, and,
4 Your Honor, it sounds like we'll have
5 thousands and thousands of utilities here on
6 the 29th. Generally speaking we have
7 resolved all of these with respect to
8 stipulations. We seek the authority to do
9 that. And as I said, Your Honor, in all
10 candor we have an other line which where we
11 do exactly that and we can negotiate. We
12 want to keep it to two weeks. We may in
13 certain instances do more. We may in certain
14 instances try to do less if we find out, but
15 we don't need to give utility deposits or if
16 we could use old security deposits in the
17 close of stores. So we would like to have
18 the authority to implement that procedure
19 without prejudice to the utility companies
20 coming in and acting on their rights. I can
21 give you what they will say in response to
22 this. They will say never got a receipt.
23 And we'll have those arguments but we
24 generally have resolved it, and I think it is
25 generally a procedural motion to get us

1 through 29 days from now.

2 THE COURT: Does any party wish to
3 speak in opposition to this motion? Mr.
4 Johnson.

5 MR. JOHNSON: Your Honor, Russell
6 Johnson here on behalf of Virginia Power and
7 several Virginia entities, Duke Energy,
8 several energies, Progress Energy,
9 Consolidated Energy Company of New York, and
10 several northeast utility companies. Our --
11 I don't disagree that the debtors need
12 procedures here. It is a big case and a lot
13 of utilities. Essentially a few arguments.
14 One a legal argument and one procedural.
15 With respect to the motion to the procedural
16 objection I have, Your Honor, is that I think
17 there should be an objection deadline. This
18 procedural -- we make a request, they get to
19 look at it and decide whether or not it is
20 okay, and then three days before the hearing
21 they'll let us know whether or not it is okay
22 and then there will be a hearing. I just
23 don't think that is really what's proper. I
24 think we should be able to object to this
25 motion to procedures that are set forth and

1 still be heard before the 30th day. I think
2 if we're going to have a hearing before the
3 30th day I think that's fine. I don't have a
4 problem with them seeking these procedures
5 but I think my client should have the right
6 to object to them. There is nothing in this.
7 This is a final order that basically says
8 these are the procedures, you have filed
9 them, and for some unfortunate utilities that
10 don't get this notice or get it too late they
11 will be forever barred from seeking adequate
12 assurance. I think that's improper as well.
13 I'm only representing my client that are
14 actually here. So, Your Honor, I would
15 request that there be some deadline, maybe 10
16 days before the hearing date, that we can
17 object to these procedures. I haven't had a
18 chance to read through the whole thing. I
19 tried to digest as quickly as I can to get a
20 lot of the notice of this hearing this
21 morning. So that's the first issue.

22 The legal issue, Your Honor, is
23 essentially the debtors are here under
24 Section 363(c)3. They are under the
25 provision that says they can modify the

1 adequate assurance of the utilities as deemed
2 satisfactory under (c)2. That's fine.
3 That's what they are here for. If you go
4 back to (c)2, my client -- we don't want a
5 segregated deposit fund. That's not what we
6 would choose as the form of adequate
7 assurance. My clients would want a cash
8 deposit as the form. So we don't think that
9 the debtors have the ability to modify the
10 form. My clients would be asking for cash
11 deposit, and all the 366(c)3 allows them to
12 modify is the amount. It says very
13 specifically in there that they can modify
14 the amount of the (c)2 deposit. It does not
15 allow them to modify the form. So my clients
16 would be fine accepting a two week or 15 day,
17 whatever it is that they are proposing, cash
18 deposit to tide this over until the matter is
19 heard, whatever the 29th or 30th day is
20 whenever the Court can schedule a final
21 hearing. We don't want this segregated
22 account which may or may not be there at some
23 day in the future. They even put it in their
24 motion whether or not they are going to be
25 able to fund this thing. So we want the

1 actual cash to tide us over because that is
2 the type of adequate assurance we would
3 request.

4 THE COURT: Let me see if I
5 understand. We are still dealing with 366(b)
6 thought, right? All 366(c) is doing is
7 defining some of the terms for purposes of
8 figuring out what's adequate assurance
9 payment under 366(b).

10 MR. JOHNSON: No. A chapter 11 case
11 like this it is really all 366(c).

12 THE COURT: I understand the
13 procedures in 366(c). Didn't we have the
14 same liquidity in the Rowe case.

15 MR. JOHNSON: Well, Rowe was a cash
16 deposit.

17 THE COURT: I understand. What you
18 are objecting to is that it shouldn't be a
19 draw for the most part on the letter of
20 credit.

21 MR. JOHNSON: It would be better if
22 there's a letter of credit than a segregated
23 bank account.

24 THE COURT: That's the way it is set
25 up for block account so the reserve is there

1 under the --

2 MR. JOHNSON: Well, they still have
3 financing. If they lose financing, the
4 segregated account presumably would be gone
5 as well. There is nothing said about that,
6 but I have to assume -- if they lost
7 financing or have a reduction in financing,
8 what will happen to that segregated account?
9 That has not been made clear in the motion.
10 That's why we would prefer to have cash until
11 this matter is heard on the 29th or 30th,
12 whatever day the Court schedules for this.

13 THE COURT: All right. And tell me,
14 as I'm a little bit unsure about your first
15 objection to the procedures, what is it
16 procedurally that you want to object to? You
17 don't like the fact that they are making the
18 offer and you have to then have a
19 counteroffer or do you want to object to them
20 being able to establish a procedure on first
21 day motion?

22 MR. JOHNSON: The objection would be
23 to the entire motion which would be, one,
24 that a segregated account can't be the proper
25 form of adequate assurance. It's got to be

1 cash. That would be the first thing we would
2 like to object to, which we all have the
3 opportunity. This is the final order on the
4 first day of the case that they are proposing
5 that then sets -- requests the utilities have
6 to send these requests to all of these
7 various folks that have all of these things
8 in it. We would send requests for charts and
9 account information with things like that
10 anyway. I think this goes over the top of
11 all the stuff they are asking in there, but
12 then they can get a period of time where they
13 have to look at it. Because we have five
14 days before this determination, five business
15 days prior, and then three business days
16 prior they have to respond to us letting us
17 know whether or not they agree with our
18 adequate assurance requests and then the
19 matter gets heard. That seems like a pretty
20 crazy timetable. We would like to have an
21 objection out there and have this Court hear
22 our objection on all of these procedures and
23 not have to wait and give them some request
24 and if we don't give them the request by the
25 proper time and deemed to have waived it. I

1 just don't think that we should have to fit
2 into that whole thing and comply with their
3 procedures which aren't even set forth in the
4 statute. The statute doesn't provide for
5 these procedures. The statute says we make a
6 request or they can, you know, make a request
7 but -- and they can move to modify. That's
8 all the statute provides. And I don't have a
9 problem, as I said, with this matter being
10 heard before the 30th day, but I certainly
11 want it to be heard before the 30th day with
12 a final hearing on what their Section 366(c)3
13 motion seeking to modify our request would
14 be. I think this throws the whole thing out.
15 If we make a request, we're -- what pleading
16 do we have before the Court? We don't have
17 any pleading before the Court at all. We
18 have a request that we sent to them and then
19 we will be back before this Court if we don't
20 agree on the request that we sent. We have
21 no pleas, we have nothing before the Court at
22 all under these procedures. The final order
23 is being entered, we get to send some
24 request, and then there is a hearing.

25 THE COURT: All right. Thank you.

1 MR. GALARDI: Your Honor, two
2 responses. First, I have no problem if
3 everyone of Mr. Johnson's clients are carved
4 out from this motion, and the reason I have
5 no problem is that I don't need a procedure
6 for them because the Bankruptcy Code -- all
7 we're trying to do is actually jump the gun
8 for the Bankruptcy Code because you start
9 with (b), and what (b) says is that a utility
10 can terminate service or discontinue if
11 within 20 days after the day of order of
12 relief we don't furnish adequate assurance of
13 payment in the form of a deposit or other
14 security. We're not 20 days now. I don't
15 need this procedure. I'm trying to jump the
16 gun to give people something. So if every
17 one of his clients wants to step out of this
18 procedure, I will write an order today that
19 Mr. Johnson's clients don't have to comply.
20 He doesn't want that. He wants his money
21 now. The problem with that is the code
22 doesn't say he gets his money now. What it
23 says is if after 20 days I make an offer of
24 form of security -- and we're basically
25 saying we're making an offer and here it is

1 two weeks. 6(i) in (c)1(a) says other forms
2 of security that's mutually agreeable. We
3 know Mr. Johnson. I know him from good
4 cases. He's not going to find it acceptable.
5 So what does the Bankruptcy Code say? Well,
6 in that instance you either get to an
7 agreement, now we're in (c)2, in 30 days or
8 they can terminate. Fine. Then what we do
9 is after the 30 days is a (c)3 when we come
10 back. What we're trying to get here is
11 before the 30 days so we can't terminate. So
12 I have two solutions. One, let's just carve
13 him out. A procedural objection is therefore
14 relevant. He wants to take an appeal on this
15 kind of order. He's always wanted to do
16 that. So let's carve him out, he's not
17 applicable, and he can make an offer
18 individually and he can accept it or not.
19 And as long as we agree, and I think he stood
20 up here and said 29 days is fine, let's just
21 schedule a hearing on his request for day 29
22 and he's carved that out of the motion and
23 that objection is resolved.

24 THE COURT: Mr. Johnson, does that
25 resolve your objection?

1 MR. JOHNSON: Yes. I love the extra
2 commentary, Judge. But, yes. So carve us
3 out here on the 29th day of whatever schedule
4 you have is fine.

5 THE COURT: To make sure you stay,
6 we're going to schedule those dates at the
7 conclusion of this hearing.

8 MR. JOHNSON: I'm here for another
9 client as well.

10 MR. GALARDI: Can I just ask that he
11 put the name of his clients on the record.

12 MR. JOHNSON: Yes. Progress Energy
13 in Florida, Progress Energy in Carolina,
14 Dominion Virginia Power, Dominion East Ohio,
15 Dominion North Carolina Power, Dominion
16 Peoples, Dominion Hope, the Consolidated
17 Edison Company of New York, Yankee Gas
18 Services Company, Public Services of New
19 Hampshire, Connecticut Light and Power,
20 Western Massachusetts Electric, Duke Energy
21 Carolinas, Duke Energy Kentucky, Duke Energy
22 Indiana and Duke Energy Ohio. I think that's
23 all.

24 THE COURT: Thank you, sir.

25 MR. GALARDI: And with respect to

1 that, Your Honor, at the same time I think
2 our order provides that once he's carved out
3 then we can reduce the 5 million dollars by
4 two weeks for each of those utilities so the
5 five million will come down and there will be
6 no reserve for any of those clients.

7 THE COURT: That's how I understand
8 it to work as well. The motion with that
9 adjustment will be approved.

10 MR. GALARDI: Thank you, Your Honor.
11 Your Honor, the next matter -- and I'm glad
12 he's in Virginia and we can do that the first
13 day instead of coming back for a hearing.
14 Number 12, Your Honor, is the next motion up.
15 It is debtors' motion for an order
16 authorizing the continuation of certain
17 customer practices. Your Honor, most of the
18 obligations that we have are not cash
19 obligations. There's the gift cards.
20 There's the warranties. So there is no
21 number in our budget for that, but obviously
22 we could technically under the Bankruptcy
23 Code say today, sorry you have your gift card
24 and you can't collect. You come buy goods
25 with it. You're not going to get a refund.

1 You're not going to get a warranty.
2 Obviously we're trying to reorganize. Maybe
3 if we were liquidating the first day, that
4 would be the smartest relief. In order to
5 make -- as I said in the introduction, to get
6 customers back in the store, to have the foot
7 traffic, to get the margins, we simply have
8 to honor those things. The only cash number
9 other than honoring those kinds of things,
10 which are warranties which are often provided
11 by third parties, is the one we have -- we
12 have a weekly refund that we occasionally
13 have. And so we're on budget for customer
14 practices. You will see a 1.1 million dollar
15 number each week. I can't say that that's a
16 hundred percent accurate of the refund we
17 took up a model what it is during this
18 period. We would like to be able to refund
19 people's money if they are not happy with
20 Circuit City goods. We think it is critical
21 to the business to have customer satisfaction
22 as I have said in the introduction. As Mr.
23 Besanko will testify, one of the issues we
24 have is a very low customer satisfaction, and
25 our job now is to bring the customers back in

1 foot traffic. We think it is critical to the
2 operation of the business. I don't know if
3 you'd like to hear testimony from Mr. Besanko
4 on this or any of the other people I have
5 available, but we would ask Your Honor to
6 approve the customer practices.

7 THE COURT: Any party wish to speak
8 in opposition of this motion? All right.
9 This motion will be approved.

10 MR. GALARDI: Thank you. Your
11 Honor, I am now up to item number 13 on the
12 agenda, which again is the prepetition
13 relief. It's prepetition shipping and
14 delivery charges. Obviously with goods going
15 across the country through all sorts of
16 shippers and vendors, many goods will be
17 caught up currently in transit. We may owe a
18 certain amount of shippers amounts of money.
19 Sometimes we get letters from those shippers
20 that we are not going to deliver those goods.
21 We are going to essentially get a warehouse
22 lien or other lien on those goods if you
23 don't pay us either the prepetition amount or
24 some amount. We are not going to deliver
25 those goods. What this motion says is we

1 estimate there could be as much as 10 million
2 dollars in transit or prepetition amounts
3 that we might not receive goods. We believe
4 that we would only pay these goods -- and
5 this again is in our discretion -- only if
6 those shippers are owed less than the value
7 of goods we can sell at retail. So we have
8 said that we could owe as much as 10 million
9 dollars of prepetition freight. We would ask
10 Your Honor to approve that we could make such
11 payments. Although we can sue people on
12 state violations and all sorts of things,
13 it's probably more expensive and more time
14 assuming and too devastating to stand up on
15 those bankruptcy rights. So we would ask
16 Your Honor to approve our ability to pay in
17 our discretion up to 10 million dollars to
18 prepetition freight to secure this.

19 THE COURT: Any party wish to speak
20 in opposition to this motion? It will be
21 granted.

22 MR. GALARDI: Your Honor, the next
23 matter on my agenda is item number 14.
24 Again, in the normal course of business the
25 company has various contractors building

1 parts of the stores, modifying parts of the
2 stores, modifying the heating and the HVAC
3 systems in the stores. Your Honor, as things
4 became tight we began to not pay people as
5 often or frequently as they may like. We had
6 filed approximately about 1 million dollars
7 worth of already mechanic's liens that we
8 know of, plus when we looked at our system
9 there's probably as much as 5 or 6 million
10 dollars of potential secret liens, mechanic's
11 liens, contractors' liens that could be
12 filed. So we have sought here again
13 authority to be able to relieve ourselves of
14 those liens in the amount of \$6,500,000.
15 Again, as we sit here today we've got notice
16 of 1 million dollars. We're not going to pay
17 people if they don't file their liens. We
18 are not going to pay those people if they are
19 not valid, not perfected, but, again, if we
20 do have valid protected liens, rather than
21 litigate they are secured claims. We don't
22 need to have the interest charges. We ask
23 Your Honor to allow us to pay those even
24 though they are prepetition claims but they
25 would be secured by state law liens or

1 otherwise and we would have to pay them by
2 the end of the day and we would ask Your
3 Honor to approve the authority to up 6.5
4 million dollars. Again, all of these are
5 interim relief. We can come back if we have
6 an opposition to it. It is only what we
7 would have to pay in the meantime and it is
8 close to 6.5 million dollars.

9 THE COURT: Does any party wish to
10 speak in opposition to this motion? It's
11 granted.

12 MR. GALARDI: Your Honor, the next
13 matter on the agenda is a motion to pay
14 various foreign vendors. Your Honor, we
15 clearly have a lot of foreign names in
16 various pool. We have the Samsungs, the
17 Sonys, the LGs. That's not who we are
18 seeking to pay through these motions.
19 Instead, we are seeking to pay those people
20 who are foreign vendors that are not subject
21 to the jurisdiction of the Court and
22 enforcement of the automatic stay and whose
23 goods we actually need. And with respect
24 that, Your Honor, again, we do have such
25 vendors. We are asking the authority to pay

1 up to 6.5 million dollars to those vendors.
2 At the present time we don't know exactly how
3 much is exactly being demanded. What we are
4 doing again is we don't have a critical
5 vendor motion here today and this is our way
6 of dealing with what we think are essentially
7 critical foreign vendors that we can't incur
8 stay violations, we can't get the goods, and
9 in the discretion of the management think
10 that we need to get those goods. A lot of
11 these vendors often have documents and we
12 have fees remaining to pay cash at this point
13 to receive those goods, and, again, going
14 into Black Friday to the extent that we can
15 get these goods in we think it is essential
16 to our reorganization efforts, and so under
17 the Bankruptcy Code although they are
18 prepetition they are not secure. We would
19 ask Your Honor to pay foreign vendors up to
20 the same, 6.5 million dollars.

21 THE COURT: Anyone wishes to speak
22 in opposition to this motion? It will be
23 granted.

24 MR. GALARDI: Your Honor, the next
25 on the agenda is number 16 which is our

1 motion to continue our insurance policies and
2 all insurance policies, including DNO
3 insurance policies. Your Honor, with respect
4 to the insurance we think that we are up to
5 date and all premiums are paid for the
6 prepetition period. I don't know of
7 insurance companies that actually ever bill
8 in arrears. In fact, they usually front load
9 it in the period. Nonetheless, to give them
10 comfort that we have the money to pay we want
11 the authority. As to insurance in general we
12 believe it is ordinary course type of
13 payment. We probably don't need authority
14 but it is always good to grant this sort of
15 authority. Your Honor, to be candid, we have
16 the DNO policy. That's fortunate or
17 unfortunate would be -- we are in
18 negotiations with them December 1st
19 terminating obviously. Keeping the board and
20 having people available to us is critical. I
21 have had a lot of experiences. I expect
22 insurance companies under the circumstances
23 will probably raise our premiums but we
24 wanted to come into court to let you know
25 that we are in fact negotiating it. We do a

1 big number of this budget of 9 million
2 dollars. We are hoping that we can do much
3 less than that, Your Honor, but to keep our
4 board, to keep the management and everyone
5 operating and to feel comfortable with their
6 responsibilities and not to be concerned, we
7 do think it is an ordinary course. We will
8 try to keep the number as low as possible.
9 As I have explained to the board at times,
10 you know, once you're in bankruptcy Your
11 Honor determines the outside of the ordinary
12 course and whether it is appropriate. It is
13 really the tail period and what's going to
14 happen here, and to keep the people who have
15 been most familiar with the company and
16 management we think it is essential to
17 approve our being able to negotiate in good
18 faith the lowest possible premium to secure
19 the insurance the company has historically
20 had.

21 THE COURT: I agree. I think it is
22 ordinary course. I will certainly grant this
23 motion.

24 MR. GALARDI: Thank you. Your
25 Honor, the next one is, again, somewhat of a

1 procedural motion that we use. It gives us
2 some help with respect to vendors. It is a
3 motion seeking four forms of relief. The
4 first form of relief is just confirm that if
5 somebody has goods in transit and they
6 deliver them post petition they will be paid
7 for those goods post petition. It is a
8 benefit to the estate. It is a 503(b)1, but
9 in many times in my experience that people
10 call -- if I deliver these goods today am I
11 going to get paid for them? It is almost a
12 comfort order for the average person. Here's
13 the order. See the title. The Judge says we
14 can pay this. We've already gotten calls
15 today from vendors saying, how do I know
16 you're going to pay me tomorrow? How do I
17 know you have the authority to pay me
18 tomorrow? This order solves that problem and
19 we think it is an abundance of caution
20 relief. The second part of this is to say we
21 pay in the ordinary course. The third is if
22 we get goods that we want to return -- and
23 again it has to be something we want to
24 return. There are buckets I believe in the
25 facility that says you can't just return

1 anything. But if it is really stuff that's
2 better to return, we want authority to
3 return. And finally we established
4 essentially a notice procedure for people to
5 file reclamation claims. It is not really
6 procedure in the sense of paying and
7 reconciling it. It is just confirming that
8 you have to give us the demand under the
9 Bankruptcy Code in 20 days. We reserve all
10 of our rights. You reserve all of your
11 rights. It does not preclude people from
12 coming in. If they want to get TRO and
13 injunction in an adversary proceeding, it
14 doesn't preclude them from doing it. We are
15 reserving all of our rights for defenses, but
16 it is a way that we can set procedures for
17 them to file it and then start to gather
18 these claims.

19 Why is it important to the debtors
20 at this time really leads into the next
21 motion is that we need to -- actually it is
22 another motion, 503(b)9. There's an
23 interplay as Your Honor knows from BAPCPA
24 between reclamation claims and 503(b)9
25 claims. 503(b)9 claims are not really

1 perfect reclamation claims. They're within
2 the 20 days as opposed to the 45 days. Those
3 are all constituting the administrative
4 claims and secure claims that we have to
5 address. Given the time frame in which we
6 are trying to run this case we think it is
7 very advantageous to have bar dates
8 immediately with respect to periods so we can
9 start to gather the information to formulate
10 a plan and what we would have to do to exit.
11 We would ask Your Honor to approve it. I
12 know there is a gentleman in the courtroom
13 that has a warehouse, and what we have agreed
14 is that -- and this will go to the other
15 motion. We are not going to return his goods
16 in that sense. He keeps his lien to the
17 extent he has a lien and we've discussed the
18 relief and this is not trying to change any
19 of his rights whether he has a warehouse lien
20 or another property in that. I don't know if
21 there is anybody else that concern about this
22 motion.

23 THE COURT: Does anybody wish to
24 speak to this motion?

25 MR. ENGLANDER: Yes, Your Honor.

1 Good afternoon. Brad Englander. I represent
2 Alliance Entertainment Corporation Source
3 Interlink Media, LLC. My clients basically
4 supply CDs, DVDs to the debtor and all their
5 stores and other related merchandise. Some
6 of what my clients do is sell products. Some
7 of it is warehouse products and provide for
8 fulfillment services. I don't think we have
9 an opposition to the motion itself. I think
10 we have very little opportunity to review the
11 form of the order. I understand from Mr.
12 Galardi's comments that there is an
13 opportunity still to object to these orders
14 being entered on an interim basis and that
15 there is not an attempt here to deprive us in
16 connection with the return provision, in
17 particular substantive rights that are
18 available under applicable documents not
19 bankruptcy law or bankruptcy code. So we
20 don't oppose the entry of the order if in
21 fact it is still subject to some sort of an
22 objection period and we can work with the
23 debtor to develop some language that gets us
24 a comfort level.

25 THE COURT: That was certainly my

1 understanding being entered on an interim
2 basis until such time we can get any
3 objections resolved, and it's also my
4 understanding or at least my interpretation
5 what was being asked for is really to confirm
6 basically what is in the bankruptcy code and
7 really not anything -- any additional
8 substantive rights?

9 MR. ENGLANDER: I think mostly
10 that's correct, and I think that's what the
11 intent is. We have concerns whether some
12 language in particular dealing with return
13 rights might leave out protections the
14 Bankruptcy Code provides us, but I think we
15 will be able to work through that.

16 THE COURT: Very good. Thank you.

17 MR. GALARDI: And, Your Honor, I can
18 affirm I think it is the Bankruptcy Code.
19 The only language I've ever had objected to
20 is sometimes people had goods returned to
21 them objected and they actually have to
22 accept the goods, and our language may be a
23 little ambiguous on that point. But, again,
24 we can make that in terms of we can resolve
25 it, and we are not trying to do anything but

1 to get an order to shippers to deliver goods.

2 THE COURT: Very good. On that
3 basis the Court will approve the motion.

4 MR. CARRIGAN: Your Honor, this
5 Daniel Carrigan from McKenna, Long and
6 Aldridge on behalf of the Bethesda Office,
7 LLC, one of the debtors vendors. I apologize
8 to the Court and counsel. I was unable to
9 hear a good bit of what Mr. Englander and the
10 other gentleman had to say. I suspect we
11 will come out in the same place, but if I
12 may, Your Honor, may I outline some of the
13 things we think need to be addressed in
14 connection with this motion.

15 THE COURT: You may.

16 MR. CARRIGAN: Thank you, Your
17 Honor. The paragraph two of the proposed
18 order indicates that the vendors shall have
19 administrative expense claims with the
20 appropriate priority. However, paragraph
21 three says -- and I'm not sure whether this
22 is contrary to counsel for the debtor had to
23 say -- but they are authorized but not
24 obligated to pay the undisputed obligation
25 arising from post petition shipment for

1 delivery of goods, and that would be
2 something that on a final basis would have to
3 be addressed. Secondly, in connection with
4 the provisions for the reclamation claims and
5 the 503(b)9 claims the paragraph -- I think
6 proposed paragraph 5(d) indicates that in the
7 event the debtors and the reclamation
8 creditors agree upon and allow reclamation
9 amounts, the debtors would be authorized to
10 make payments or be required to return the
11 goods sought to be reclaimed. If this is too
12 far down the line, the notion of an actual
13 return of goods is going to be -- or goods
14 the vendor wants to get back is going to be
15 somewhat illusionary. So if there is a
16 relatively short time between -- and the time
17 there's a hearing perhaps on an interim
18 basis, it would work, but we would ask it is
19 not a license for the debtor to do whatever
20 it wants with products in the interim that
21 would be outside applicable law.

22 THE COURT: All right. Very good.
23 The Court was going to approve the order on
24 an interim basis so that these types of
25 objections could be made. And I suppose we

1 would do that within the next 30 days.

2 MR. GALARDI: Your Honor, I was
3 thinking that all of the ones that are on
4 interim would be the first time which is
5 hopefully in the next 30 days. So I have no
6 objection to that.

7 THE COURT: Were you able to hear
8 that?

9 MR. CARRIGAN: No, Your Honor, I was
10 not.

11 THE COURT: We will set that -- we
12 will approve the motion on an interim basis
13 reserving your objections as you have
14 outlined them, and we have that hearing at
15 the next omnibus hearing date which would be
16 within the next 30 days. We will set those
17 dates at the end of this hearing.

18 MR. CARRIGAN: We understand. Thank
19 you, Your Honor.

20 THE COURT: Thank you.

21 MR. GALARDI: Your Honor, I would
22 ask now to move out because they are related
23 and I looked down and I guess my agenda got
24 changed. If we can move to item 21, which is
25 really the motion to procedures with respect

1 to 503(b)9 claims. I think it is fairly
2 straightforward, Your Honor, and it is a
3 procedure that we have adopted. As Your
4 Honor is aware, the BAPCPA changed the
5 Bankruptcy Code to provide the claims for
6 goods delivered to the debtor in the 20 days
7 prior to the bankruptcy that a person may
8 seek to file an administrative claim under
9 503(b)9. Your Honor, again, it is a very
10 significant change to the Bankruptcy Code
11 because it sets up administrative expenses
12 that would have to be paid to exit bankruptcy
13 because a 503(b)9 claim is a 507(a)2 claim
14 which then has to be paid under 1129(a)9. I
15 like giving all of those numbers. Your
16 Honor, it is important to us to set a bar
17 date for that and to give out a proof of
18 claim form so we do not let those linger. In
19 addition, because of the language the cases
20 unfold, especially with a retail debtor, you
21 have the overlay of 526 and I have to be
22 litigating whether 502(d) is applicable,
23 whether you can then use a preference defense
24 to various circuits. These are all
25 initiatives. And it is just helpful to get a

1 bar date set for all of these so we can sort
2 of say, well, if you didn't get your
3 reclamation, congress changed that. I
4 understand what the gentleman said, but
5 congress changed it. Their only right right
6 now, unlike the old code, is to take back the
7 goods as secure credit. It is no longer
8 about administrative claims they used to get.
9 This gives us administrative claims. If you
10 fail to do certain things, gives you proper
11 demand but it is in a 20 day window. For
12 those reasons, Your Honor, we would like to
13 establish the bar date set for in that motion
14 for people filing 503(b)9 claims. We don't
15 think it's a hardship that -- they can
16 probably calculate what they believed they
17 delivered in the last 20 days and file a
18 proof of claim. I think we have given 30
19 days as we've requested. We will give notice
20 out to people, including a form of order to
21 our vendors and ask that they file a proof of
22 claim within 30 days of the entry of the
23 order for 503(b)9. I know the official proof
24 of claim form says you don't have to file
25 administrative claims for post petition

1 claims but it still constitutes that you can
2 use administrative claims for prepetition
3 period. I don't know if that was intentional
4 or just an action that happened to work for
5 us. So we basically take that form and give
6 them a proof of claim form that says 503(b)9.
7 It is actually 30 days to a date of service
8 of the bar date. That's what we ask for,
9 Your Honor. And we think that will help
10 coordinate in all the work we have to do in
11 the first 60 days in this case to understand
12 what kind of financing we need to make a
13 hurdle in that 60 days to 120 days I
14 mentioned early on.

15 THE COURT: Any parties wish to
16 speak in opposition of this motion? All
17 right. That will be approved.

18 MR. GALARDI: And that was item 21,
19 Your Honor,

20 MR. CARRIGAN: Your Honor, excuse
21 me. I'm sorry. This is Dan Carrigan again.
22 I hate to be the left wing in this
23 discussion. May I be heard on this, please?

24 THE COURT: Yes, you may. This son
25 setting a bar date on reclamation claims.

1 MR. GALARDI: On 503(b)9.

2 THE COURT: 503(b)9 claims. I'm
3 sorry. Thank you.

4 MR. CARRIGAN: Yes, Your Honor.
5 There are probably a fair number of
6 reclamation creditors who are out there who
7 from past experience in the courts in
8 Delaware and New York and Florida that we
9 found that the negotiation of the terms of
10 the parties -- while we have no objection to
11 setting one and getting it under way, and
12 we're not trying to be obstructionists and be
13 a problem, I think my client and we would
14 like to be helpful in this. I think counsel
15 for the debtor referred to it as lets get a
16 vendor before we're planning all of this and
17 we would as well as soon as possible. But
18 perhaps the way to do this would be to give
19 people an opportunity -- set the bar date but
20 give opportunities to folks, reclamation
21 creditors in particular, and then perhaps
22 even an ad hoc group or official committee to
23 come in and ask for modification or changes
24 without prejudice at this stage instead of
25 being stuck with what I'm hearing is most

1 people have not had the opportunity to
2 review.

3 THE COURT: I don't know if I
4 understand your objection. Are you saying
5 that you don't think there should be a bar
6 date or do you say that the bar date being
7 suggested here is an unreasonable bar date?

8 MR. CARRIGAN: No, Your Honor. We
9 agree that there ought to be a bar date. We
10 don't have an objection to setting one out in
11 the future, but as to the terms how the
12 reclamation claims are established or not
13 established, burden of proof and all that
14 sort of thing, those sorts of things are also
15 addressed in the bar date order, and that all
16 we are suggesting is those terms, not the bar
17 date itself, but the terms ought to be open
18 for some review and discussion before they're
19 fixed at the only way to get a reclamation
20 claim established. I'm sorry, 503(b)9
21 established. So there could be a short
22 period during which this would be sent out,
23 and if you have problems with the form and if
24 nobody objects or nobody responds, then there
25 is no need for a hearing and it can go

1 forward on the basis of here. If people do
2 object, if people do respond, then perhaps
3 have a final hearing on the terms of the
4 503(b)9 process.

5 THE COURT: So what you're saying is
6 you don't have any objection to establishing
7 the bar date but that you want the approval
8 of the order on an interim basis with regards
9 to the claims procedures set forth in
10 paragraph eight of the proposed order?

11 MR. CARRIGAN: Yes, Your Honor.

12 THE COURT: Okay. Do you wish to
13 speak to that?

14 MR. GALARDI: I do, Your Honor.
15 There are two problems with it. First, I
16 don't think we change any burden. I think
17 503 has the burden. It is an administrative
18 claim. I believe they have to show a -- you
19 know, they have to carry their burden to
20 satisfy this. I also don't see this as
21 changing any burden to requesting. And what
22 we are really requesting is to facilitate
23 this, and I think what is quite consistent is
24 proof of delivery within the 20 day period in
25 which they have to do to file a claim. We

1 just made it very clear. The only thing
2 we're doing is we're asking that we make it
3 clear in the 20 days. I think that each
4 individual vendor -- and very much like any
5 other bar date, Your Honor, if they don't put
6 in all of this information, we have to do an
7 insufficient documentation they should not
8 have a right. You still have a claims
9 process. You still have a resolution. So we
10 don't think we have done what he's objecting
11 to. The second thing is, if we don't put
12 something in here for these kinds of
13 procedures for what's necessary to file a
14 proper claim, we can't sent the notice to set
15 the 30 days because people won't tell us the
16 information. So it is pretty much a useless
17 process. They can put in one piece of paper
18 that says I assert a claim for 10 million
19 dollars. So that doesn't do us any good
20 because. The whole purpose -- like any other
21 administrative claim they have to carry their
22 burden and show there was a delivery, where
23 it was delivered, to whom it was delivered
24 and what value was delivered, and that it was
25 delivered in the ordinary course. And if you

1 go through our procedures, that's exactly
2 what it asks. It says they must identify the
3 particular invoices very much like a
4 reclamation demand. They have to say what
5 claims that they have reclaimed. So if they
6 have filed both a reclamation claim in 20
7 days and 503(b)9, that's different
8 implications for a state. One could be
9 administrative. One, they have to show they
10 had goods on hand on the date. 503(b)9 --
11 you just don't have to be on hand. We could
12 have sold those today and it doesn't matter.
13 So that's all you need to know. Which one do
14 you want to assert here? The next section
15 says must include certification that the
16 goods were sold in the ordinary course of
17 business. That's what the statute says and
18 it has to be ordinary course of business. So
19 it tells us it has to be ordinary course of
20 business. It is not different than the proof
21 of claim form that filed under proof of
22 perjury. So we think all we've done is
23 broken out what would be required to carry
24 the burden in this first instance. And I
25 think if we take those procedures out, I

1 don't think it gets in another. That being
2 said, if somebody doesn't satisfy this, I'm
3 sure Your Honor for excusable neglect or any
4 other OGA standard can say, okay, they didn't
5 put in a piece of paper but that's not enough
6 to disallow their claim, and that's claims
7 projection profits. We are really trying to
8 get notice and as much information as we
9 think is legitimate in 30 days.

10 THE COURT: Well, as I understand
11 the objection that's stated as far as the
12 terms are concerned it's not disagreeing that
13 they shouldn't be in the order but just on an
14 interim basis so they might have an
15 opportunity to study them and see if some of
16 these procedures are objectionable given the
17 fact they have only had notice of this
18 offense in this case for, you know, not even
19 10 hours and not had a chance to look at it.
20 And so if there is something in here that
21 would be for some reason burdensome or
22 something, they would have an opportunity to
23 come back and say perhaps they should get
24 some other form of relief.

25 MR. GALARDI: And, Your Honor, I

1 have no problem with that on an individual
2 basis. For example, this gentleman comes in
3 -- and even if it is after the 30 day bar
4 date, if someone comes in and says I didn't
5 satisfy this particular and the debtor is now
6 raising an objection past that, my
7 understanding is that they can always come
8 back and say these procedures don't bind me.
9 Just because I didn't attach invoice five
10 doesn't mean I don't have a 503(b)9 claim.
11 I'm not saying these procedures to be all and
12 end all. Now, they don't have an invoice at
13 the end of the day. So I don't think it is
14 precluding them. If we put the procedures
15 in, I guess my only question is let's assume
16 we go forward, let's assume the procedures go
17 out, and let's assume 30 days from now
18 someone says I want to change the procedures.
19 Well, I have just mailed notice to a large
20 number of creditors. What does that do? I
21 have do another notice. No. I think what it
22 does is if you comply, fine. If you don't
23 comply, Your Honor has the equitable power to
24 say, look, I remember the dialogue on the
25 record. I remember somebody complained about

1 it. I'm not going to live by the letter of
2 procedures. This is not supposed to be a
3 technical hurdle. This is supposed to be to
4 get the debtor information.

5 THE COURT: All right. Counsel on
6 the phone, do you have anything further that
7 you wish to say?

8 MR. CARRIGAN: Just two
9 observations, Your Honor. One is
10 establishing excusable neglect and what have
11 you. It's a different exercise than
12 establishing that there is a special problem
13 with the -- and I'm not saying this is a
14 special problem. Please understand that. It
15 is just that if you're going to have -- I
16 don't know how many 503(b)9 claims they are
17 anticipating, but apparently it is a big
18 enough number that they would anticipate a
19 sort of one size fits all approach to them,
20 and given that situation and also the
21 situation that in 503(b)9 it actually says
22 after notice of a hearing there shall be
23 allowed administrative expenses for including
24 and in this case the value of the goods and
25 so forth. They are also asking for a

1 certification in here that the goods were
2 delivered in the ordinary course of the
3 debtors' business. That is an easy basis for
4 objection as to how would you know what the
5 debtors' -- ordinary course of the debtors'
6 business with respect to that particular
7 vendor who is filing. So I think it is not a
8 question of a wholesale changes in this
9 thing. It may be -- if any. But at least it
10 is an opportunity for people who have just or
11 just seeing this for the first time to say in
12 my experience this has all always led to
13 something maybe that's not even foreseeable
14 in its current form on the first day. And in
15 virtually every other case, Fleming,
16 Ameriserv and others where we have this kind
17 of order that has taken place after a sum-up
18 to study the procedures and have an
19 opportunity to suggest changes to the debtor
20 and if not to the debtor to the Court.

21 THE COURT: All right. Thank you.
22 The Court has had the opportunity to study
23 this order, and I have looked at the claims
24 procedures that are set forth in the order.
25 They appear to be very reasonable to me. And

1 I understand the debtor's concern about
2 getting notice out and having to make sure
3 that that notice gets out within the time
4 frame. So the Court is going to overrule
5 your objection to the motion, and I'm going
6 to grant the debtor's motion as it is in its
7 entirety.

8 MR. GALARDI: Your Honor, again, you
9 can hold me to this, we are not trying to
10 hold -- change the burden.

11 THE COURT: I understand. I think
12 in saying that I think the Court can deal
13 with the kinds of issues that counsel has
14 raised in objection on a case by case basis
15 as they come up. So one size doesn't fit
16 all. The Court can certainly deal with those
17 kinds of exceptions on a case by case basis.

18 MR. CARRIGAN: Thank you, Your
19 Honor.

20 MR. GALARDI: Thank you, Your Honor.
21 Your Honor, now we are on 18 which Your Honor
22 is the, I guess, guard to pay all of this
23 relief that we have now asked for and Your
24 Honor has granted. We need approval of our
25 debtor and possession financing. Your Honor,

1 with respect to this, again, I will defer to
2 Your Honor as to the witnesses. First of Mr.
3 Besanko is, in fact, in the courtroom today.
4 He submitted an affidavit. I have two other
5 people that if called as witnesses could also
6 testify with respect to the findings with
7 respect to there is no other financing. The
8 names are Mr. Robert Duffy of FTI Consulting
9 and Mr. Bernard Fountain of Rothschild . Your
10 Honor, just very briefly, again, I think in
11 stark -- to give Your Honor -- if Your Honor
12 doesn't mind, I will proffer in general the
13 testimony as to those three.

14 THE COURT: That will be fine with
15 me. I will let anybody who wishes to
16 cross-examine anybody, put them on as
17 witnesses if someone wants to cross-examine,
18 but otherwise I'm willing to accept the
19 proffer and I have read the affidavit.

20 MR. GALARDI: Your Honor, thank you.
21 With respect to this, and I will tell it more
22 as a history and any of the three gentlemen
23 could be called as a witness, could testify,
24 that debtors in prepetition were in agreement
25 with the lenders lead by the agency Bank of

1 America with respect to the 1.3 billion
2 dollar commitment, that as debtors proceeded
3 to have liquidity issues they began
4 negotiations with the current bank group
5 regarding potential financing options. In
6 addition, that the debtors explored through
7 their restructuring personnel and themselves
8 alternative types of financing, whether it be
9 on an unsecured basis, a junior basis as well
10 as a priming basis. Your Honor, what the
11 debtors have found is there is no other DIP
12 financing and for very good reasons. As I
13 mentioned at the outset and as the witnesses
14 would testify, first of all, and as Your
15 Honor is well aware, the market currently for
16 getting financing has been an incredibly
17 difficult market. Second, retail lending and
18 ABL lending is an incredibly difficult
19 market, and as we went through this and as
20 the witnesses will testify we happen to have
21 three or four major retail lenders in the
22 group already. So in order to obtain a
23 different type of financing we would have to
24 go to a different type of lender. We have,
25 for example, Bank of America, Wells Fargo and

1 GE. And if Your Honor reads the papers and
2 sees the other debtors in possession of the
3 retail world, it's one of those three that is
4 engaging in all of the lending. So we
5 pursued our lending with respect to other
6 potential lenders. Rothschild is out
7 soliciting alternative lenders. As I
8 mentioned in my presentation and as Mr.
9 Besanko will testify we did secure or have
10 commitment or a proposal to secure second
11 lien financing with a potential bank group or
12 potential lender group -- they are not banks
13 -- for second lien financing. We have gotten
14 all the way to a commitment letter that had
15 covenants with respect to which we are still
16 open but wanted a 4 million dollar sort of
17 downstroke to keep the commitment to get to
18 the December 3rd date and we didn't know what
19 the covenants were. We just couldn't get
20 comfortable that the covenants would be the
21 same as the ones that are in the current
22 banking facilities that we are seeking
23 approval for, and indeed we were concerned
24 the covenants would be even stricter and
25 therefore potentially cause us to default.

1 In addition, Your Honor, in looking for that
2 facility we went back and went through an
3 analysis with the company, and Mr. Besanko,
4 if called as a witness, would testify that he
5 considered and the board considered and the
6 advisors considered other forms of financing
7 and other restructuring alternatives. The
8 company considered just simply saying it is a
9 Chapter 11 liquidation, let's simply go out
10 and do all the store closings. Fortunately
11 or unfortunately, there are too many
12 retailers currently right now in that
13 process. So you even get people to bid --
14 for example, on our 155, all we kept hearing
15 was there was not enough capacity in the
16 market to have that sort of thing nor did we
17 think it was wise. The board has determined
18 that there is a hope for this company to
19 either restructure itself -- the gentleman on
20 the phone has already said he would support a
21 vendor plan. And we have -- and as Mr.
22 Rothschild would testify and as Mr. Fountain
23 would testify Rothschild was retained to
24 pursue strategic alternatives with respect to
25 the 366 sales. As we stand here today we

1 have significant interest from a number of
2 buyers, and some of those buyers are
3 including possibly providing subordinated
4 financing. None of those buyers were
5 prepared on this term to give us their first
6 lien facility. No one is prepared to prime
7 the Bank of America, and the debtors are
8 simply not prepared to go into a priming
9 fight on the first day because of the kind of
10 instability that will lead to business. Nor
11 was anybody in a secured loan facility
12 willing to step outside and do their own
13 facility. They are right now doing all the
14 retail cases together and they are
15 particularly willing to take a greater
16 commitment to provide the financing
17 separately so one group could stay with the
18 same bank group. There was no lender
19 prepared to do a subfacility in that group
20 that would have provided the liquidity that
21 we needed on the time we needed with the
22 covenants that we needed. And then the
23 company considered the use of cash
24 collateral. Your Honor, based upon a review,
25 and it makes sense in this instance, if you

1 look at the inventory value, we are currently
2 getting -- I think it is about 75.5 percent
3 on cost of inventory based on the appraisal.
4 Currently the company has approximately 1.2
5 or maybe even more, 1.3 billion dollars of
6 inventory. So we believe that the lenders
7 are over secured at this particular point in
8 time -- and if called to testify -- based
9 alone on the inventory, and there are other
10 additional assets. Your Honor, we could have
11 tried to do a priming fight for that reason,
12 but there would have been fights, fees, and,
13 as I said, re-instability of the business.
14 Nonetheless we pulled out our bankruptcy code
15 and tried to determine whether the use of
16 cash collateral can satisfy us here or
17 nonessential cash collateral. As we explored
18 the cash lateral option originally, the cost
19 of such a cash collateral, especially in this
20 market is, one, the company was doubtful it
21 could simply live off cash collateral by
22 itself. Though we don't get a lot of
23 availability the 20 million dollars is enough
24 to make a cushion as Your Honor sees in the
25 motion, and it get us through a time. As we

1 go into essential cash collateral it was our
2 belief that and the company's belief that you
3 would get just as restrictive covenants as
4 you see the packages that you're getting
5 today with respect to the covenant packages.
6 Even in cash collateral you get a restrictive
7 covenant package and it is not free. It's
8 very expensive and maybe as close. As Mr.
9 Daunton (Ph) would testify and Mr. Duffy
10 would testify, it is not clear that the cost
11 of a consensual cash collateral be all that
12 much less than what Your Honor sees here. We
13 also considered let's try to avoid the fees
14 altogether and let's think about
15 nonconsensual cash collateral arrangements.
16 Frankly, we threw that at the bank group and
17 that is what basically got us to the facility
18 that we have. There was an earlier date by
19 which we would had to have a subfacility. We
20 got that to the January 17th date. At the
21 date that we threw that in the bank's way we
22 had four covenants. We got down to two
23 covenants. Again, Your Honor, to start a
24 case with a nonconsensual use of cash
25 collateral, one, we are not sure we can live

1 with cash collateral by itself, two, you
2 don't have an LC facility with cash
3 collateral, and, three, you start a case
4 telling your vendors we are going to live all
5 cash collateral. It doesn't send a good
6 message to the vendor community, and Your
7 Honor may know the Wall Street Journal has
8 always said the reason we are here we
9 couldn't get a DIP facility. That's not
10 true. We could get it. We just had to get
11 the best one we could under the market.

12 With respect to facility itself,
13 Your Honor, we did have a discussion with the
14 U.S. Trustee a little bit about disclosing
15 the fee letters. We have opposed and filed a
16 motion under seal to not disclose fee
17 letters. That being said, we have disclosed,
18 as I said in a gross term, and we can use
19 gross in many ways, we have used gross in the
20 terms of the fees and advisory fees with
21 respect to this. The number that I have
22 given you, the 30 million on that page, is
23 really 27. Those are all fees, all expenses
24 for all the parties. We don't think it was
25 -- we filed the motion under seal. It is for

1 pricing for Bank of America and other
2 lenders. We decided it was not appropriate
3 to give the specifics of those fee letters,
4 but for disclosure to the Court those numbers
5 do include all of the fees and the price tag
6 for the facility. Your Honor, again with
7 respect to what we are obtaining for this, we
8 are obtaining, I think, in just basic --
9 obviously when you go into bankruptcy you
10 have a default. If you have a default, you
11 cannot get a commitment to lend and lenders
12 do not have to lend to you. We are getting
13 our commitment to lend and to continue the
14 commitments subject to the borrowing base.
15 The commitments are being reduced, but as I
16 mentioned earlier, and Mr. Besanko will
17 testify, we don't have sufficient collateral
18 to get up to the cap. We don't expect to
19 have sufficient collateral to get up to that
20 cap. So we don't think we are getting up to
21 anything in this term, at least with respect
22 to the short term commitment.

23 THE COURT: Why do you have the cap
24 so high if you don't expect to get there?
25 Because you have an unused commitment fee,

1 too.

2 MR. GALARDI: There is a commitment
3 fee. Well, there's two things. One, people
4 like to see big numbers, and it is important
5 to say I have a commitment. And if we had
6 gone to 1.3 to 900, we would have more
7 questions that I would have to answer right
8 now. Two, if we are successful, if we get
9 vendor terms, if we get credit terms, and we
10 get the goods in, we can then borrow more.
11 We just can't be sure. At this point on this
12 model with these conservative estimates it
13 was simply the fact. So to pay for a fee to
14 have the luxury of having a facility, indeed
15 as Mr. Besanko will testify, when we first
16 got the 1.3, we never thought we would get
17 there. What we got concerned about is in
18 October and given trade terms, what we
19 thought was we would actually end up getting
20 there. So the good news is we didn't get
21 there, and the bad news is we didn't get
22 there because we didn't get enough goods in
23 to be able to borrow as much as we would like
24 to. So, again, you like to have a nice
25 facility so you can tell the lenders in press

1 releases that we have a bank group that's
2 giving us 1.3 billion dollars. We have a
3 bank group that's giving us 1.1 billion
4 dollars. So we have reduced the commitments,
5 but, again, we think we are living within the
6 commitments. And it was a significant point
7 to the bank group to reduce the commitments.
8 So although we get very close to the
9 commitment of 1.1 and eventually the 900
10 comes in the December period, it was
11 important in part of the deal that the bank
12 group wanted was they would reduce the
13 commitment. They are financial incentives
14 for banks to not have outstanding commitments
15 in the same amount. So it was a *quid pro quo*
16 in one of the terms. In addition, as I
17 mentioned, the *quid pro quo* was that this
18 facility rolled on the first day or be taken
19 out on the first day. Again, Your Honor,
20 Kirkland and Ellis, whose application will be
21 put forth, has done most of the debtor work.
22 Kirkland and Ellis has reviewed the security
23 package to the perfection of liens, believes
24 they are properly perfected liens, and as
25 Your Honor knows, that binds the debtor but

1 it doesn't bind the committee to go and
2 review that. So we were comfortable with
3 what -- two things, one, that they were
4 properly perfected and, two, that they are
5 fully secure. So consequently -- and given
6 that that was another term, that it is not a
7 take it or leave it. I don't say that. We
8 had back and forth negotiations on slow
9 rolls, fast rolls. The problem with the slow
10 roll going into the interim hearing is it's
11 hard to figure out what's actually rolled and
12 what's not rolled. So in this sense it is
13 almost as if a new facility is being created
14 post prepetition with a different collateral
15 package. So we agreed to the role of the
16 facility on the first day to turn it into a
17 post petition. Again, as I mentioned before
18 and as being advised by the board and the
19 advisors, we agreed that we would be giving
20 up certain bankruptcy types of leverage that
21 we can have. Again, as the advisors would
22 testify to, if you're going in Bank of
23 America, GE and Wells, you have to come out
24 if you are going to come out with Bank of
25 America, GE or Wells. So they have

1 litigation essentially between, you know,
2 exit financing as well. So in this context
3 we thought that, you know, we are not going
4 to have a fight at the end of the case as to
5 whether I can reinstate the debtor, whether I
6 can cram up the secured lenders. We're going
7 to need a friendly face at the end of this if
8 we can exit. In addition, Your Honor, even
9 in a 366 sale we understand enough about the
10 retail market that there is very good
11 likelihood if somebody wants to acquire this
12 they are going to go to GE, Bank of America
13 or Wells. So, again, it was to take an issue
14 off the table. I understand why the banks
15 did it and these were results of
16 negotiations. Your Honor, we started these
17 negotiations with respect to DIP financing,
18 including a subordinated financing probably
19 over a month ago, one, to keep out of
20 bankruptcy and another. It has been
21 remarkable actually given the market. The
22 back and forth, give or take, the
23 negotiations as I have already mentioned,
24 including the last seven or eight days when
25 people thought we would be filing a week ago,

1 there was a bank group set with a -- asserted
2 default deadlines and a void date facility by
3 December 3rd with four different covenants
4 that we were very concerned about meeting and
5 paying as I like to say 30 million dollars
6 for 50 million dollars availability for four
7 weeks just wasn't palpable to the company.
8 We then pulled out the card of the
9 nonconsensual cash lateral. We had back and
10 forth negotiations with Bank of America whose
11 agent was helpful. We had back and forth
12 negotiations with GE and Wells Fargo. We
13 couldn't find another financial, but it gave
14 us the opportunity to say no to the
15 subordinated facility and essentially in the
16 company's mind buy us 60 days to come to the
17 next bridge as I like to say. Again, nobody
18 can guarantee these projections. No one can
19 guarantee that we make these projection but
20 we think they are reasonable under the
21 circumstances given the uncertain market. It
22 provides us sufficient availability. It has
23 limited covenant testing. We are testing on
24 December 13th. We have a minimum
25 availability that we have to maintain. We

1 have some covenants and essentially a block
2 that we can't go below 50 million dollars,
3 and I think it's the end of December or end
4 of January. There are step-downs as I have
5 mentioned, financial covenants, or rather we
6 go from a no covenant deal to what I will
7 call a covenant deal, but they are not that
8 aggressive covenants. There are certain
9 clean-down provisions. As we've said they'd
10 have to go from 50 million dollars from
11 January 4th through January 10th. We have a
12 facility that we need to have a subordinated
13 facility. If called to testify both Mr.
14 Daunton, Mr. Besanko and Mr. Duffy would say
15 that the negotiations with Bank of America
16 over these facilities is characterized by arm
17 strength, good faith negotiations. Mr.
18 Besanko would testify the absence of such a
19 facility, we have not -- we have basically
20 been on freeze for the last seven days, that
21 we are beginning to go into irreparable harm
22 because we would be unable without a facility
23 to secure goods that we need to get to Black
24 Friday. This is a critical time in the
25 business, and absent that we have had trucks

1 turned around as late as yesterday with
2 respect to this, and we need this money
3 immediately, that our business will suffer
4 irreparable harm, that we have some
5 availability but very limited cash. Without
6 this facility we will have greater
7 uncertainty in our workforce. We will be
8 unable to meet our payrolls as we have been
9 concerned for the last week, that we would be
10 unable to obtain goods in the short term and
11 not pay our rent and all of the expenses. So
12 absent relief in this facility and absent
13 payment of this facility the company will
14 suffer immediate and irreparable harm. In
15 addition, the advisors and Mr. Besanko will
16 testify the company was unable to secure
17 unsecured financing, financing on a
18 subordinated facility and indeed any other
19 alternative DIP financing.

20 Your Honor, also I just wanted to be
21 clear with respect to the motion, and I know
22 there are a couple of people in the
23 courtroom, the facility is essentially one
24 priming only itself and the prepetition debt
25 that it has. Your Honor, there is an

1 indemnity and there is a prepetition lien,
2 and that essentially stays in case somebody
3 wants to undue the facility at a certain
4 point and say go back to the prepetition
5 position. Your Honor, it is carved out for
6 two -- I don't know how we end up saying it,
7 but there is no nonconsensual priming of any
8 good valid first liens. So the gentleman who
9 may have a warehouse lien, if it is a good,
10 valid perfected lien, there is no priming of
11 those liens. We are not asking for a
12 nonconsensual prime. To the extent that
13 we're permitted prior liens in the bankruptcy
14 document we are not priming those liens.
15 We're still permitting prior liens. What
16 happens is the bank group's collateral
17 package now expands and by expanding that
18 package it is not priming. It is taking a
19 second with respect to anything that has
20 previous liens. In addition, Your Honor,
21 there are landlords here. They are not
22 taking a first lien except to the extent
23 perhaps the leases permit them to take so or
24 the mortgages. They are confined to their
25 state law rights. With respect to that they

1 are not trying to prime them. They are not
2 taking a lien on the leases themselves unless
3 they are permitted to do so and they are
4 taking a lien on the proceeds of such leases.
5 I think that is one of the concerns I had
6 heard from the lenders' counsel. Excuse me
7 one second. I'm sorry. Just to clarify,
8 they are not taking any liens on any leases.
9 It's just the proceeds. I think the language
10 says that, Your Honor. Your Honor, I don't
11 know if anyone wants to cross-examine Mr.
12 Duffy, Mr. Daunton and Mr. Besanko. I don't
13 know if Your Honor has questions that I can
14 answer. Each one, in particular Mr. Besanko,
15 we have looked through the factual findings
16 that Your Honor has called upon that there
17 are stipulations. Mr. Besanko has read that.
18 The debtor finds that they are true and
19 correct to the best of his knowledge. To the
20 extent they are not we just conclude that
21 there are some that are legal in nature. And
22 so we would ask Your Honor to approve the
23 financials, but I can subject any of those
24 gentlemen to cross-examination.

25 THE COURT: Does any party wish to

1 be heard on the motion or cross-examine any
2 of the proffered witnesses?

3 MR. POLLACK: David Pollack.

4 THE COURT: Mr. Pollack, hold off
5 just a minute. I have another counsel at the
6 podium and I will come back to you.

7 MR. LEHANE: Good morning, Your
8 Honor. Robert LeHane, Kelley Drye and Warren
9 on behalf of landlords with approximately 80
10 locations, Developers, Diversified, General
11 Growth and Morning Garden Realty. I believe
12 my comments will be similar to Mr. Pollack's.
13 If not, I'm sure he will follow up. I had a
14 brief conversation with counsel for the
15 lender and counsel for the debtor before the
16 hearing. One of the concerns the landlords
17 had in addition to the question of the direct
18 lien on the leases was lenders access to
19 store premises and collateral access in the
20 event of default under the DIP facility, and
21 the parties have agreed that the lenders
22 rights in the event of default will be
23 limited to whatever rights they have under
24 state law, whatever relief Your Honor is
25 willing to grant them on a motion on notice

1 and adequate time for landlords to respond or
2 whenever rights landlords gives them on
3 consent. I just wanted to put that on the
4 record, Your Honor. Thank you very much.

5 THE COURT: Thank you very much.
6 Any other party? I will come back to you,
7 Mr. Pollack. I haven't forgotten you but I
8 have other people that will speak first.

9 MR. MATSON: Good afternoon, Your
10 Honor. Bruce Matson here on behalf of Bank
11 of America and its agent. I wanted to
12 confirm the bank group is in agreement with
13 the representations regarding the lease
14 issues.

15 THE COURT: That were just recited?

16 MR. MATSON: Yes, sir.

17 THE COURT: Thank you, Mr. Matson.
18 Any other party?

19 All right. Mr. Pollack.

20 MR. POLLACK: Fortunately, Mr.
21 LeHane has already covered my points, Your
22 Honor. Thank you.

23 THE COURT: He warned me as much.
24 All right. Very good.

25 MR. HILLMAN: Your Honor, David

1 Hillman, as a housekeeping matter I would ask
2 the Court's indulgence to be heard even
3 though I haven't yet filed a pro hac vice
4 application nor have I affiliated with a
5 local firm.

6 THE COURT: You may be heard.

7 MR. HILLMAN: We represent Panasonic
8 Corporation of North America, and Circuit
9 City is currently in possession of products
10 that have been delivered to Circuit City by
11 Panasonic. These goods were delivered under
12 a consignment agreement, and under the terms
13 of the agreement Panasonic, not Circuit City,
14 has title to the goods. The goods -- excuse
15 me. The different consignment agreement that
16 was terminated prior to the bankruptcy case.
17 So Panasonic is planning on filing an
18 adversary proceeding for the turnover of the
19 goods that belong to it as well as a TRO and
20 a preliminary injunction from preventing
21 Circuit City from selling those goods. I
22 haven't had a chance to read every clause in
23 the DIP motion, in the DIP order in the DIP
24 credit agreement but wanted to -- I point out
25 inconsistency and to make sure that the DIP

1 credit agreement and the DIP lenders or that
2 the debtor wasn't granting liens on property
3 that it does not have title to.

4 THE COURT: All right. I certainly
5 don't know how it could.

6 MR. GALARDI: Your Honor, that's our
7 understanding. We can affirm that whatever
8 this order says, if we don't own the property
9 and it is true, a consignment, it is not our
10 property, we are not granting liens on it.

11 THE COURT: Did you hear that
12 representation, Mr. Hillman, from counsel for
13 the debtor?

14 MR. HILLMAN: Unfortunately I could
15 not, Your Honor.

16 THE COURT: All right. He confirmed
17 what the Court had said that the debtor was
18 -- nothing in the order or in the bank
19 financing is providing any kind of lien on
20 any property that the debtor does not own.

21 MR. HILLMAN: Thank you. I would
22 just ask for the debtor's counsel perhaps to
23 include that reference in his final interim
24 order that's submitted to the Court.

25 MR. GALARDI: We have no problem

1 with that, Your Honor. Again, we will put in
2 a sentence that says if it's not our
3 property, we are not granting liens
4 notwithstanding anything in the order. We
5 will be anxious to get the order entered.

6 MR. HILLMAN: Thank you, Your Honor.

7 MR. LUCIAN: Your Honor, John Lucian
8 and Regina Kelbon. We have similar concerns.
9 If I may defer to Ms. Kelbon. I'm a Virginia
10 attorney. We will be pro hac her into the
11 case, Your Honor.

12 THE COURT: All right. Ms. Kelbon.

13 MS. KELBON: Thank you, Your Honor.
14 I would like to thank you for allowing us to
15 participate telephonically. I do appreciate
16 that courtesy.

17 THE COURT: You're welcome.

18 MS. KELBON: I must say I'm having a
19 very hard time hearing Mr. Galardi who has
20 been very faint in and out.

21 THE COURT: That's not Mr. Galardi's
22 fault. That's the -- the equipment that we
23 have set up is not fully functional yet.
24 We've just moved into a new courthouse and so
25 that's the reason, but we're trying to make

1 do as best we can.

2 MS. KELBON: Thank you, Your Honor.

3 Your Honor, if Your Honor would indulge me
4 just for one moment to sort of explain the
5 relationships with the parties. We represent
6 Cellco, a partnership doing business as
7 Verizon Wireless, and Verizon Wireless is a
8 party to a direct sales agreement with
9 Circuit City. The relationship between the
10 parties is that Verizon Wireless operates a
11 kiosk in the Circuit City stores which is in
12 effect a separate Verizon Wireless store
13 within a Circuit City store. Verizon
14 Wireless has a presence and is substantially
15 in all of the stores. There is a handful of
16 them that Verizon Wireless does not operate
17 in. Pursuant to the agreement, Your Honor,
18 Verizon Wireless establishes and operates
19 merchandising and demonstration displays and
20 offers, sells and markets Verizon Wireless
21 services. The relationship provides Verizon
22 Wireless with complete control over the sale
23 and marketing of its inventory and services.
24 Verizon Wireless controls the kiosks and they
25 are solely responsible for hiring, training,

1 managing and terminating the employees who
2 work at kiosks. In effect, the kiosks are
3 manned by Verizon Wireless employees.
4 Verizon Wireless also establishes the
5 pricing, the fees for its equipment and
6 services, and Circuit City has no authority
7 to sell Verizon Wireless equipment either in
8 its stores or on its website. So all the
9 Verizon Wireless inventory is separate and
10 apart from Circuit City and is located in
11 locked storage cages. As Verizon sells its
12 inventory it pays commissions monthly to
13 Circuit City and it also has various charge
14 back rights under this agreement for any
15 services that are disconnected within a
16 certain limited period of time. So I would
17 just like to have confirmation in the order
18 if Mr. Galardi would be so accommodating to
19 confirm that -- make sure that nothing in
20 this priming is impacting or affecting any of
21 the charge back rights that also --
22 recoupment rights that Verizon Wireless has
23 as well as it's clear that it's Verizon
24 Wireless inventory so there can be no liens
25 granted on Verizon Wireless property if

1 either in the DIP or through the Hilco
2 motion, which I'm not sure which one is up.
3 It is very hard to hear, but it is sounds
4 like the DIP order that you are referring to
5 right now.

6 THE COURT: It is the DIP order that
7 we are referring to right now, and I believe
8 Mr. Galardi has already made mention that he
9 doesn't intend to take a lien on any property
10 the debtor does not own. I will have him
11 confirm that now. He's at the podium.

12 MR. GALARDI: Your Honor, we confirm
13 again that we are not taking or granting any
14 liens on any property that is not property of
15 the estate. I would also note, Your Honor,
16 that Verizon has a contract with the company
17 and nothing we are doing is changing the
18 rights of Verizon or any company and to
19 reserve all of our rights and they have all
20 of their rights under the contract. But to
21 the extent they keep it in a locked area and
22 it is not our property, we are not granting
23 any liens in the DIP facility with respect to
24 Verizon property.

25 THE COURT: Ms. Kelbon, were you

1 able to hear that exchange?

2 MS. KELBON: Not really, Your Honor.

3 I'm sorry.

4 THE COURT: Again, it was
5 represented to the Court that the debtor is
6 not taking any interest in any property
7 that's not property of -- is not granting any
8 liens of any not property that's not property
9 of the debtor and to the extent Verizon
10 maintains its own inventory in locked places
11 they are not taking or granting any liens on
12 Verizon property, that they are subject --
13 that there is a contract between Verizon and
14 the debtor and that, you know, controls this
15 and they're reserving all of their rights
16 under the contract.

17 MS. KELBON: That's fine, Your
18 Honor, if we can include something like that
19 in the order as well as that we are rightful
20 and charge backs are protected as well.

21 THE COURT: That would be governed
22 by the contract.

23 MS. KELBON: That is correct, Your
24 Honor. I don't want anything in the priming
25 order to be deemed to be impacted on our

1 rights or --

2 THE COURT: I think we can put a
3 sentence in the order that says it is not
4 impacting your usual rights under the
5 contract.

6 MS. KELBON: Thank you, Your Honor.

7 MR. CARRIGAN: Your Honor, David
8 Carrigan. Again, I apologize for
9 interrupting if there's anyone else that
10 needs to be heard.

11 THE COURT: I don't know but there
12 is nobody else at the podium right at the
13 moment. You may proceed.

14 MR. CARRIGAN: Thank you, Your
15 Honor. Ours is a two party creed. One, is
16 this one of the motions that will be brought
17 on for the final hearing on the next omnibus
18 hearing date?

19 THE COURT: Most certainly this will
20 be entered -- well, the Court's understanding
21 is this will be an interim order because we
22 don't have a committee here that is able to
23 look at any of this and then we'll enter
24 another final.

25 MR. GALARDI: It is a financing

1 order. So you can't get a final order for 15
2 days anyway. Whether it is the omnibus date
3 or we talk about a separate date for final
4 hearing on DIPs, but this is an interim
5 order, Your Honor.

6 THE COURT: Right.

7 MR. CARRIGAN: The reason I asked,
8 Your Honor, is that the interim period is
9 defined as -- I think it is defined as the
10 commencement of the case through December 29,
11 2008. I'm not sure whether that was intended
12 to be that whole period or just until the
13 next hearing, whether it is the final hearing
14 or it proves to be a jury final hearing or
15 whatever. The second inquiry was much along
16 the lines of prior counsel was that with
17 respect to, for example, in this case our
18 interest has been in the 503(b)9 rights and
19 also in the reclamation rights. It is not --
20 the entry of the order providing for the
21 financing is not intended to affect those
22 rights as at least subject to the final
23 hearing if we understand it correctly.

24 MR. GALARDI: I'm actually not sure
25 what the gentleman is asking for with respect

1 to 503(b)9 and with respect to reclamation.

2 MR. CARRIGAN: The inquiry reports
3 in most of these cases is the effect of both
4 prepetition liens and also upon any liens
5 granted post petition upon reclamation rights
6 and that's the inquiry. All we are saying is
7 that whatever it was on the filing date is
8 whatever it is when it is up and finally
9 approved.

10 MR. GALARDI: We agree. Your Honor,
11 again, I think many people are used to cases
12 where the lender has all assets and there is
13 nothing for reclamation claims. So what the
14 gentleman is -- whatever the world was as of
15 the petition date, whether there was anything
16 that their reclamation claims could get a
17 lien for under the secured, we are preserving
18 that. We are not trying to change what the
19 world was on the petition date. Now that I
20 understand the question I know where he's
21 concerned about.

22 THE COURT: All right.

23 MR. CARRIGAN: Thank you. Your
24 Honor, that's what we understood and thank
25 you.

1 THE COURT: Okay. You are welcome.

2 MR. GALARDI: And, Your Honor, Mr.

3 Berman did point out that period, that day,
4 the interim period, but we are seeking an
5 interim period before December 29th and so
6 the order will underline itself. Hopefully
7 we'll have a final order entered and that
8 would be a final hearing when Your Honor
9 schedules that.

10 THE COURT: Very good. Does anybody
11 else wish to be heard in connection with the
12 DIP financing order? All right. It does not
13 appear to be anybody. At this point the
14 Court will accept now your proffer as you
15 have set forth, and with the clarifications
16 that you've made on the record the Court will
17 approve on an interim basis the DIP
18 financing.

19 MR. GALARDI: Your Honor, what we
20 would like to do is -- fortunately we don't
21 need to borrow today. What we would like to
22 do is give Your Honor revisions to the order.
23 We would like it to be entered today so first
24 thing -- we actually can't borrow until
25 Wednesday. We can close on the order and

1 start borrowing as early as Wednesday
2 morning. As I mentioned there is payroll.

3 MR. LUCIAN: Your Honor, John
4 Lucian. We are having difficulty hearing Mr.
5 Galardi's comment.

6 THE COURT: He's asking the order be
7 entered today if at all possible because of
8 their needs to be able to draw on the
9 financing. And the Court will certainly
10 accommodate that as soon as you can get that
11 to me.

12 MR. GALARDI: Thank you, Your Honor.

13 MS. KELBON: Your Honor, we would
14 appreciate if you could circulate it to
15 counsel because we have concerns about it so
16 we can quickly look at it.

17 THE COURT: Well, it is being
18 entered on an interim basis and the need for
19 the company to be able to get this done and
20 get it done within the time, because tomorrow
21 is a holiday, is going to be pressing. So
22 I'm not going to require that counsel
23 circulate it among everybody, submit it to
24 the Court. If for some reason it's something
25 we need to take up that we didn't get in on

1 an interim basis, we will certainly take care
2 of it when we have the next hearing when
3 everyone has had a chance to review it.

4 MR. GALARDI: Thank you, Your Honor.
5 I think it is clear we are not putting any
6 liens on any property that is not property of
7 the estate.

8 THE COURT: If there's anything I
9 heard today is that if you try to do that,
10 then there will certainly be protection
11 afforded.

12 MR. GALARDI: I appreciate it.

13 MR. LUCIAN: John Lucian. We did
14 not catch Mr. Galardi's last statement, but I
15 assume it was along the lines they will not
16 be taking any property that belongs to the
17 debtor.

18 THE COURT: Correct. We have nailed
19 that.

20 MR. LUCIAN: Thank you, Your Honor.

21 MR. GALARDI: I will try to speak up
22 for the people. The next matter is item 19
23 on the agenda, Your Honor, and I will say
24 that the next three matters are put after the
25 financing because I will say they are not the

1 ordinary necessarily first day. Maybe the
2 last one is. Your Honor, the next motion is
3 motion for the debtors to assume the agency
4 agreement that was entered into between Hilco
5 Merchant Resources and Gordon Brothers and to
6 continue to conduct the store closing sales
7 pursuant to that agency agreement and various
8 guidelines. Your Honor, prebankruptcy -- and
9 again, with respect to this Mr. Besanko could
10 testify but also Mr. Duffy because FTI and
11 myself were very much involved in the
12 negotiations of the agreement, prior to the
13 bankruptcy, after we made an announcement on
14 September 29th, I believe, in the SEC, the
15 company was evaluating its leases, its
16 four-wall analysis, FTI conducted that
17 analysis, and it came to a determination that
18 there we're at least 155 store leases that we
19 should try to vacate and sell the inventory
20 because it didn't fit our final business
21 model. Whether they were less profitable
22 stores or in markets that were no longer
23 performing well, we proceeded with that. In
24 the beginning of August or the middle of
25 August we then solicited -- and as many of

1 the people in the courtroom know there are
2 essentially six liquidators that you normally
3 approach with respect to liquidating your
4 inventory and conducting store closing sales.
5 We entered into confidentiality agreements
6 with all six. And all six confidentiality
7 agreements, much to the consternation of each
8 one of them, precluded them from forming a
9 joint venture without our consent. We were,
10 again, hoping to get a lively auction and we
11 got a lot of push back from all of them, and
12 at the end of the day, after much back and
13 forth, all pretty much said they weren't
14 going to bid unless we let them joint
15 venture. We then said we would allow them to
16 joint venture and to submit bids, and indeed
17 the two that actually joint ventured, the
18 Gordon Brothers and Hilco, we were trying to
19 keep apart because we brought them as the two
20 most likely to be able to put competing bids
21 and we were unable to do that, and the other
22 four formed their own joint venture. Your
23 Honor, we were soliciting what was often
24 called an equity bid, a bid where you would
25 take -- because we wanted to get a big pop of

1 liquidity early on with respect to the early
2 part of November when we most needed it. An
3 equity bid is essentially what we were asking
4 for with a sort of 80 percent down, buy the
5 inventory, liquidate the inventory in stores,
6 and at the back end you collect your 20
7 percent book, whatever upside. Because of
8 the market and because of the uncertainty of
9 the market and uncertainty of the Christmas
10 period and also the cost of funds of each of
11 the liquidators themselves have to borrow to
12 pay that 80 percent we got what I would call
13 very disappointing bids with respect to an
14 equity bid. We rejected all of those bids
15 and then went back to the liquidators and
16 asked them to provide us now with a fee deal.
17 A fee deal, as Your Honor probably knows,
18 they act as our agent and give you a straight
19 stake. The concern about that is with all
20 the business in the world who knows how it is
21 that they will be motivated, for how long
22 they are going to be motivated and you're
23 paying the fee and as the sales wind down you
24 might not be getting your money. So we go
25 again, very disappointing proposals with

1 respect to the fee deal. We then said we
2 will try one more time. I guess this is now
3 the method, the de jure of the liquidators,
4 and we got what we call a hybrid bid, which
5 is really the bid we have before us. It
6 essentially says that they will liquidate the
7 inventory but they will not have to put cash
8 up front, so we've got the cost of capital
9 out of it, and instead that they will give us
10 a guarantee that we would get a minimum
11 recovery of -- in this case 72 cents on the
12 cost value of the inventory. As I mentioned
13 before, that is still below our appraised
14 value, and in this market we have got
15 auctions to go very much higher than the
16 value, but in the market currently and in
17 retail in particular the bids are not coming
18 in even at the appraisal level, plus as we
19 heard over and over again, as we tried to
20 push this high as possible, from the
21 liquidators this is after all the inventory
22 in stores which are closing. There are
23 concerns about that. There are concerns
24 about the holiday season. We then negotiated
25 an agency agreement with Hilco and Gordon

1 Brothers over two or three days, again, an
2 agency agreement that contemplated remaining
3 out of bankruptcy. Again, if we could have
4 solved our liquidity problems, that would
5 have been our preference. We negotiated a
6 collateral package for them to secure their
7 fee. The problem in a bankruptcy is we can
8 come in and ask Your Honor to give them an
9 administrative claim for their fees. There
10 were two concerns. One, how do we get
11 assurance that we will get our fee because
12 you can always reject a contract? And how
13 can we make sure that, you know, we are
14 subject to auction? Well, we auctioned their
15 contract. We went to the auction, and
16 eventually the other joint venture just said
17 we are not prepared to outbid. We gave them
18 24 or 12 hours to bid after going back and
19 forth. They decided not to bid. So we were
20 comfortable with the price. The security
21 issue, again with Bank of America's consent,
22 we granted them a second lien on all
23 inventory on all stores. Again, Your Honor,
24 thinking that if we ever got to the
25 subordinated debt these may be the sales that

1 would be done by that point and we would work
2 around it. And Hilco and Gordon Brothers
3 agreed to take that second lien, but more
4 importantly after negotiations they also
5 agreed that upon the assumption of that
6 agreement they will no longer have a second
7 lien, again freeing our inventory from the
8 second lien so we can begin our vendor
9 negotiations and our second lien financing.
10 We also agreed to seek on a first day as fast
11 as possible the assumption of that agreement.
12 It is obviously not our preference to start a
13 store closing sale beforehand and ask Your
14 Honor to approve the procedures. We did in
15 the agency agreement and I will note -- make
16 sure that they agreed to comply with state
17 laws and store closing laws. The biggest
18 issue is leases and the lease clauses. We
19 then proceeded to negotiate with them the
20 deal, and one critical fact that they were
21 willing to do is as we knew that the sale
22 would be approaching we insisted, and they
23 have provided, people to come in and help as
24 we announced the store closing for SEC
25 purposes to make sure that we didn't have

1 sufficient shrink or TVs were there. TVs
2 were in stores. Gordon Brothers and Hilco
3 agreed to meet with us to get people in the
4 stores to make sure to avoid as much shrink
5 as possible. They provided an incentive
6 bonus to the people that are in fact in this
7 store to sell the inventory. Again, it is a
8 very hard decision to tell people that you
9 are going to be laying off people and store
10 closings in this market. And they again
11 agreed to backstop with a letter of credit
12 attestable to our bank group to 72 cents on a
13 dollar. Again, it is an urgency of our
14 agreement as set forth if we get the first 72
15 cents they get the next three and a half
16 percent and then there is a 50/50 sharing of
17 the proceeds. So we do well on the sales.
18 The preliminary results are we are in fact
19 doing very well with the sales, then there is
20 an upside for both the company and Gordon
21 Brothers. So we sort of met the equity idea
22 of get us some upside. We sort of guaranteed
23 an amount but we are getting a fee. It
24 doesn't give us the liquidity profit that we
25 wanted, but nonetheless these sales are

1 expected to go in the five or six week period
2 of time and therefore be done by December.
3 It was also very important for us to begin
4 these sales so that we could, if we need to,
5 do the lease negotiations and possibly reject
6 155 stores by the end of December and
7 therefore incur with little rent with respect
8 to the stores during the bankruptcy period.
9 The reason we put it on for first day, Your
10 Honor, as I mentioned, one of the significant
11 provisions that were negotiated was the
12 security package. From our perspective the
13 sooner that we could assume this agreement
14 the better because we could, one, relieve
15 ourselves of the lien. With respect to the
16 other relief that we seek here, Your Honor,
17 we think it is fairly standard with respect
18 to store closing procedures, and, again, I
19 know there are landlords here. We have
20 preserved the rights of AGs to come in and
21 complain. We have preserved the rights of
22 landlords to come in and complain with
23 respect to the procedures. One of the
24 choices -- and, again, these things are all
25 too common. The landlords know Gordon

1 Brothers, know Hilco. There is much
2 consternation about banners and how big the
3 banners are, whether you can put them by the
4 windows or not. They seem to always get
5 resolved. We know Karen Caudry (Ph) who does
6 represent a lot of the AGs. We think we have
7 in the proposed formal order all of those
8 protections that are required for landlords
9 and for the AGs to police this process. It
10 is a very short process. And obviously
11 Gordon Brothers and Hilco face some risks.
12 If we tail out the assumption, it is very
13 easy to come in and say, well, don't assume
14 it now when all the work is done. In
15 addition, Your Honor, we have provided them
16 with a 1 million dollar up-front deposit,
17 most of the costs to do these things, to buy
18 the signage, and we have worked with them. We
19 gave them that. There is not a lot of money
20 that we know of that was paid on last Friday
21 that we know of that was outstanding. It's
22 not as if this is a large cure here. As I
23 said, we conducted a prebankruptcy auction.
24 We have been told by the other four
25 liquidators that this is the highest and best

1 price we can get into this market. As more
2 retailers come on the market, who knows what
3 you can get in this market. As we get closer
4 to Christmas, Christmas and Black Friday, one
5 of the things we heard from most liquidators
6 is it's better to do this sooner as opposed
7 to waiting for Black Friday because we get
8 ahead of Black Friday sales, and so far the
9 results have been that. We would therefore
10 ask, Your Honor, to approve both the
11 assumption of the agency agreement as well as
12 the store closure procedures. There is
13 counsel here for Hilco and Gordon Brothers.
14 They do have a witness if Your Honor wanted
15 to have that testimony. I think, again, we
16 have Mr. Duffy who can testify, Mr. Besanko
17 as to the process. It is a business judgment
18 matter to assume a contract, to conduct the
19 store closings, whether they are inside the
20 ordinary course or outside the ordinary
21 course. We think we have taken as many steps
22 in the agreement to comply with the state law
23 which is a big concern. We have been very
24 sensitive to advertisement in those matters,
25 plus we have taken enough of the AG's

1 language for their rights to come back and
2 complain and have a process, but we really
3 don't think we are prejudicing either the
4 landlords rights and their contract rights
5 with the leases or the AG's right to complain
6 and generally Hilco and the Gordon Brothers
7 are quite good along with us to resolve those
8 objections to come back before the Court. So
9 we would ask Your Honor to approve the
10 assumption and the agreement and the
11 procedures.

12 THE COURT: Very good. Does any
13 party wish to speak to this motion?

14 MR. POLLACK: Yes, Your Honor. I'll
15 let you deal with anyone first in the
16 courtroom.

17 THE COURT: Okay. Let's take care
18 of the courtroom first and then I will come
19 back to the folks on the phone.

20 MR. LEHANE: Good afternoon, Your
21 Honor. Robert LeHane, Kelley, Drye and
22 Warren on behalf of landlords representing
23 approximately 80 locations. I respect the
24 comments of counsel for the debtor and had a
25 brief conversation with him before the

1 hearing to the effect that landlords would
2 have the rights to come back and ask Your
3 Honor for relief if the proposed GOB
4 guidelines were not sufficient. However, I
5 have had an opportunity now to go through the
6 motion and proposed order and, Your Honor,
7 this is not an interim order not with respect
8 to GOB guidelines.

9 THE COURT: Well, we will make it
10 one and you can have an opportunity to come
11 back, and if there is a problem with the GOB
12 issues you can address those and the Court
13 can take them up.

14 MR. LEHANE: Thank you, Your Honor.
15 I would suggest in the following motion on
16 the calendar, the rejection motion has, I
17 think, precisely the language that would do
18 the trick. It would allow landlords X number
19 of days. We believe 10 is probably
20 appropriate to come in and file an objection.
21 We have worked with Hilco and Gordon Brothers
22 on any number of occasions, but it would be
23 very unusual to make this a final order.
24 With that addition to these -- I also would
25 like to point out, though, that there appears

1 to be two different sets of guidelines
2 attached to the motion. There is a set of
3 guidelines attached to the agency agreement
4 and there is a different set of guidelines
5 attached as an exhibit to the order.

6 THE COURT: The Court reviewed the
7 one that was attached to the order.

8 MR. GALARDI: Your Honor, again, let
9 me address that. To the agency agreement,
10 because we entered into an agency agreement
11 prior to the bankruptcy --

12 THE COURT: It is exactly what I
13 thought.

14 MR. GALARDI: -- there were
15 provisions then to take advantage of the
16 anti-assignment provisions of the Bankruptcy
17 Code. We actually sought approval of
18 different procedures. The one that Your
19 Honor reviewed, the ones attached to the
20 order are the ones that we are seeking
21 approval. Quite honestly, as Mr. LeHane
22 knows, they are more friendly to the sorts of
23 sales and anti-assignment clauses which we
24 couldn't do in the leases prior to the
25 bankruptcy.

1 MR. LEHANE: Thank you, Mr. Galardi.
2 One other point, though, in connection with
3 any GOB sale order such as this which would
4 render lease provisions unenforceable, again,
5 those are entitled to adequate protection.
6 We believe that that adequate protection
7 under these circumstances would include
8 payment of the rent that accrued from the
9 filing date through the end of the sales. We
10 don't believe that's in the order. We would
11 ask that be included in the order. It does
12 look like the agency agreement provides that
13 the liquidator would cover the occupancy
14 expenses.

15 MR. GALARDI: Your Honor, I happen
16 to disagree that landlords are entitled to
17 adequate protection, and I'm sure Mr. Pollack
18 will say the same thing as Mr. LeHane on this
19 topic. Your Honor, we have a provision that
20 we do get reimbursed for the actual cost. If
21 we don't pay those costs or if we have to pay
22 those costs, I understand we are in an
23 accrual state, but my understanding is that
24 even though it is an accrual state it is a
25 503(b) claim and it's paid at the end of the

1 case, not necessarily at the time of this
2 period. So we believe that the landlords are
3 protected. I understand that Mr. LeHane was
4 going to do this. He knows I will probably
5 take a certain view with respect to the
6 accrual state versus billings state. Leaving
7 that aside, I think the simple answer is I
8 don't believe -- I think it could be raised
9 again in 10 days. The 10 days is before the
10 end of the month if they want to make an
11 argument with respect to what we call the
12 subrent, let them raise an objection. It
13 will me give an opportunity to either resolve
14 or do that. Nothing prejudices their right
15 in the motion to go make such a request. Mr.
16 Pollack can make a request, and they both
17 know me well enough to know we generally
18 resolve these types of objections.

19 THE COURT: Very good.

20 MR. POLLACK: Thank you, Your Honor.
21 I will work with counsel for the debtor after
22 the hearing to submit an order that's
23 consistent.

24 THE COURT: So we have a 10 day
25 period which you can file objections. It

1 will be an interim order in the meantime and
2 you can raise both of the issues that you
3 have raised.

4 MR. POLLACK: Thank you very much,
5 Your Honor.

6 THE COURT: All right.

7 MR. VAN ARSDALE: Robert Van Arsdale
8 for U.S. Trustee, Your Honor. We would
9 simply like -- I'm not certain that the 10
10 days that we are just discussing would apply
11 to everybody. We have not yet appointed a
12 committee in this case. I think the
13 committee would like to be able to look at
14 this order before it gets to be a final
15 state.

16 THE COURT: Are you concerned that
17 the committee wouldn't be formed to be able
18 to look at it within the 10 day period?

19 MR. VAN ARSDALE: Your Honor, I
20 anticipate we will have a committee hopefully
21 by this Friday. I know the solicitation went
22 out today and we need to factor through that
23 and they will need some time to actually view
24 it. The hope being that part of the people
25 in the committee may know of some other way

1 that this -- these liquidations sales could
2 take place that would benefit the entire
3 estate.

4 THE COURT: I guess we've got two
5 competing interests as with the landlords if
6 they have an interest in the GOB provisions
7 not being adequate in such they would want to
8 get in more quickly, whereas the committee
9 would need more time to look at it. So we
10 need to have some sort of balance there.

11 MR. VAN ARSDALE: Yes, sir.

12 THE COURT: I think we can do 15
13 days.

14 MR. VAN ARSDALE: That would be
15 adequate for the committee.

16 THE COURT: Okay.

17 MR. GALARDI: Your Honor, if I may
18 address the plan, I'm not quite sure -- look,
19 I have set interim orders for committees on
20 many cases. I'm not quite sure -- and I will
21 let Mr. Athanos talk to this, but I don't
22 know what it is to have an interim approval
23 of an assumption. With respect to the
24 procedures of running the store closing --

25 THE COURT: I was more concerned

1 about GOB.

2 MR. GALARDI: Right. But, again, it
3 is hard to go back and say we are going to
4 unassume the contract. So with respect to
5 the procedures and objections to procedures
6 themselves and how we are conducting them, I
7 have no problem with the committee. If it is
8 with respect to the assumption of the
9 contract, then I would have a problem because
10 we have to assume and go forward over the
11 next two to three weeks in any event. With
12 respect to the committee, I'm assuming we
13 will be completely aligned that we want the
14 most money into this estate. I have no
15 problem with their coming up with comments
16 about, well, the store closing procedures
17 should be even better and make us more money.
18 That I certainly will endorse.

19 THE COURT: Well, I think there are
20 two issues as I understand that we are doing
21 it on an interim basis, and it has to do with
22 raising the GOB terms and also the issue of
23 adequate protection. We are preserving those
24 two issues. I agree with you completely.
25 You know, you can't unassume a contract. If

1 you are assuming it, you are assuming it. So
2 I understand that. That's part of it. And
3 so for clarity I want everyone to know where
4 the Court is coming from.

5 MR. VAN ARSDALE: Your Honor, I was
6 only speaking to the GOB part of this
7 particular order.

8 THE COURT: All right. Very good.
9 We have some other people that want to speak
10 to this.

11 MR. ATHANOS: Good afternoon. Joe
12 Athanos on behalf Hilco and Gordon Brothers.
13 I think we are all on the same page here.
14 The assumption in the existing agreement --
15 what the existing agreement says is Gordon
16 Brothers and Hilco will comply with all laws
17 and Gordon Brothers and Hilco will comply
18 with all leases. That's the best you can do
19 outside of bankruptcy, and we understand
20 that. I have a witness here today who will
21 testify that it is 3 million bucks to the
22 estate if we can do better which you can in
23 the bankruptcy. You can get out of GOB laws,
24 do the supremacy clause, and you can get out
25 of the terms of leases, instead of paying the

1 bank, theaters, and having side walkers and
2 that stuff adding value to the sale, and here
3 we think it is worth 2 or 3 million dollars
4 to the debtor's estate. We think there is a
5 huge benefit there, and we think that ought
6 to be approved. But we understand people
7 need the opportunity to object, and we will
8 work with landlords' counsel, which every
9 single person who is here today on behalf of
10 landlords we have worked with a thousand
11 times and it's very unlikely we will be back
12 in court with respect to any of them. We've
13 worked a very long time. And, in addition,
14 with the AGs, the same issues. We expect to
15 have issues but we will work them out. If we
16 don't, we will come back to the Court and
17 that's fine but not on the original agreement
18 which is going to be assumed and that's it,
19 it is final, but on the new GOB procedures
20 that we are getting by virtue of the case
21 being made.

22 THE COURT: That's what I understand
23 the new GOB, the ones that were attached to
24 the order, not to the original agreement that
25 I will be approving on an interim basis

1 today.

2 MR. ATHANOS: That's fine, Judge.

3 THE COURT: I'm now turning to
4 counsel on the phone to give them an
5 opportunity.

6 Mr. Pollack, is there anything else
7 you want to raise?

8 MR. POLLACK: Well, Your Honor,
9 since Mr. LeHane knows most of my arguments
10 and Mr. Galardi usually reads my mind, there
11 isn't much else. I think Mr. Athanos really
12 hit the nail on the head and that is the
13 issue, the main issue I had was that the GOB
14 contract that they were asking to assume was
15 a prepetition one which didn't have the right
16 to do certain things which now they are going
17 to have in bankruptcy, but having worked with
18 him and Mr. Klotz from Gordon and Mr. Capp
19 (Ph) from Hilco, again, I don't see there is
20 a problem we will have to come back to the
21 Court for. We would just like that
22 opportunity in case something unusual
23 happens.

24 THE COURT: Very good. Thank you.

25 Any other counsel on the phone wish

1 to be heard on this matter?

2 MR. HILLMAN: Yes, Your Honor.

3 David Hillman, counsel for Panasonic
4 Corporation of North America. As I had
5 advised the Court during the discussion over
6 the DIP financing motion Panasonic owns the
7 goods that are in Circuit City's possession.
8 It is my understanding that some of those
9 consigned goods are -- may be in some of the
10 stores that are closing, the 154 stores. The
11 consignment agreement was terminated
12 prebankruptcy. We gave notice to Circuit
13 City, to Hilco and to Gordon Brothers that we
14 did not consent to any sale or disposition of
15 our products at any of these GOB sales. It
16 is not clear to me whether or not that
17 request is being honored, and as I had
18 mentioned we're filing hopefully today, if
19 not tomorrow, the complaint that -- a motion
20 for a TRO and preliminary injunction. So my
21 objection to the motion is I have no problem
22 with approval if the Court approves the
23 motion. My problem lies within selling
24 Panasonic's product at any of those sales.

25 THE COURT: Okay. But which is

1 going to be subject to a separate complaint
2 and TRO which you are going to bring before
3 the Court, and I assume then we'll resolve
4 those issues at that time.

5 MR. GALARDI: Your Honor, we are not
6 in any way prejudicing their rights to bring
7 a complaint, to seek a TRO or to address
8 those issues in the proper form with a
9 complaint, a TRO, and now I understand I may
10 be here a couple days doing so.

11 THE COURT: So, Mr. Hillman, nothing
12 in this order prejudices your right to
13 proceed forward, and the Court will resolve
14 the issues that you raise in the context of
15 the TRO which I will anticipate receiving
16 shortly.

17 MR. HILLMAN: Thank you, Your Honor.

18 THE COURT: Any other?

19 MS. KELBON: Regina Kelbon for
20 Verizon Wireless, Your Honor. Again, I
21 incorporate my comments that I raised in the
22 DIP. Obviously it's Verizon's inventory,
23 can't be sold by Circuit City, have no
24 authority to sell our large inventory that's
25 specially secured in marked cages. I do not

1 believe that is the intention since Verizon
2 was informed of Hilco's presence at the
3 property and we believe our stuff is not
4 included. We would just like confirmation of
5 that that there was no intention of that as
6 part of this Hilco agreement. The agreement
7 is not attached of record so we can't review
8 it to know what the actual contract says. We
9 could not find it on our docket.

10 THE COURT: I assume you've got
11 control over your inventory if it is in a
12 locked location?

13 MS. KELBON: Yes, Your Honor, we do.

14 MR. GALARDI: Mr. Athanos has just
15 confirmed they are not selling any of
16 Verizon's equipment and that's my
17 understanding, and Verizon is free to contact
18 Hilco and remove it if that's what they need
19 to do.

20 MS. KELBON: We are in touch with
21 the Circuit City management and they are
22 discussing the exit dates of the various
23 locations that the Circuit City is closing.
24 So we just reserve all of our rights under
25 our contract, and I'm sure hopefully this

1 will be worked out amicably.

2 THE COURT: Yes. So noted. If you
3 have any problem at all, you can come back to
4 the Court and get relief?

5 MS. KELBON: Thank you, Your Honor.

6 THE COURT: All right. I don't
7 think any other party --

8 MR. BRANCH: Dustin Branch,
9 representing various landlords. I quickly
10 wanted to put an objection on the record. My
11 issue has been pretty much laid out by Mr.
12 LeHane and Mr. Pollack and I've dealt with
13 Gordon Brothers and Mr. Galardi on numerous
14 occasions. But at this point I couldn't
15 really hear too well as far as the timing to
16 bring objections on going out of business
17 sales. Whether it is 10 or 15 days, I just
18 couldn't hear for sure.

19 THE COURT: We are going to address
20 that right now.

21 MR. BRANCH: Thank you, Your Honor.

22 THE COURT: All right. So first the
23 Court will accept the proffer of the
24 testimony of the proffered witnesses in
25 connection with this motion. The Court will

1 approve the assumption of the agreement and
2 then with regard to the GOB provisions and
3 the question of adequate protection of
4 landlords the Court will approve that on an
5 interim basis going forward, and it's been
6 suggested that 10 days notice and then the
7 U.S. Trustee raised a question about 15 for
8 the committee. I'm not really sure that it
9 is a committee issue on either of these two
10 issues that we're reserving. But, Mr.
11 Galardi, I would like your input on the
12 timing and so I would solicit that at this
13 point.

14 MR. GALARDI: Your Honor, again, I
15 have no objection to the landlords having 10
16 days. I have no objection to the committee
17 having 15 days if they have an objection.
18 What I expect of them is to join me in
19 opposition to any landlord objection should
20 they arise. I think there is no problem with
21 the time frame.

22 THE COURT: All right. So it will
23 be 10 days for the landlords, 15 days for the
24 committee. All right. With that then it is
25 approved.

1 MR. GALARDI: Thank you, Your Honor.
2 Your Honor, moving now to item number 20 on
3 the list of motions, this is the debtor's
4 motion. As I described early on in the case,
5 Your Honor, there has been leases that the
6 debtors have vacated the premises. Some are
7 simply barred and some are currently
8 subleased to third parties. We filed a
9 motion last night to reject all of those
10 leases. The carrying costs, as I mentioned
11 as, and Mr. Besanko would testify, is roughly
12 40 million dollars a year. It is critical,
13 especially in this accrual state to get out
14 of those leases as fast as possible because
15 each day we remain in those premises arguably
16 we are accruing post petition administrative
17 expenses. Your Honor, following sort of the
18 Delaware precedent that I actually
19 represented the landlords on, the way in
20 which we have tried to proceed to do this is
21 to give the unequivocal notice that we would
22 be out of the premises, that we don't reserve
23 any rights to go back to the premises. So it
24 is an unequivocal objection. Unfortunately,
25 Your Honor, we don't have a committee here

1 because if there was a committee I would have
2 them agree with us to that.

3 And finally to return the keys to
4 the premises. Your Honor, we have not
5 returned the keys today but we will return
6 them as soon as Your Honor blesses it,
7 because if Your Honor didn't bless the
8 rejection there was no reason to return the
9 keys. We have made arrangements to return
10 the keys tomorrow so that we would reject.
11 So we are actually seeking rejected as of the
12 petition date so we could avoid post petition
13 administrative expenses with respect to the
14 estate. Your Honor, again, this is a
15 business judgment decision. It is actually
16 evidenced by the fact that we have -- as Mr.
17 Besanko will testify, we have not been
18 operating these premises for quite some time.
19 Mr. Besanko will further testify that the
20 sublease rent that we received is less than
21 the rent that was paid. It is a drain on the
22 estate. In addition, Mr. Besanko would
23 testify that at prior times we invited people
24 in to see if they could take the lease
25 portfolio, find the market portfolio. We

1 have been unable to do so. Indeed, as Mr.
2 Rothschild will be able to testify or FTI
3 would be able to testify, one of the problems
4 with the prebankruptcy liquidation sales
5 profit is we have these leases and eventually
6 you have to do something with those. We
7 believe it is the business judgment of the
8 debtors to reject effective immediately. Mr.
9 LeHane will get up, and we don't have a
10 problem with this, but if we don't return the
11 keys within a certain period of time and if
12 we keep occupation of the premises, it's
13 without prejudice of the landlords rights to
14 come back and say, hey, you said you were
15 doing this. You didn't do it. You took the
16 value of the property. We want an
17 administrative claim. We have no objection
18 to that, but I didn't want to see that we had
19 to have the keys today. We would like to get
20 the keys out tonight, and hopefully we can
21 make the FedEx deadline, but no later than
22 Wednesday. If we can have in the order that
23 we return the keys no later than Wednesday,
24 the rejection could be effective as of the
25 petition date.

1 THE COURT: Very good. Does any
2 party wishes to speak to this motion?

3 MR. POLLACK: Yes, Your Honor.
4 David Pollack on the phone. I don't know if
5 there's anyone in the courthouse.

6 THE COURT: Yes. We'll go to the
7 podium first.

8 MR. LEHANE: Thank you, Your Honor.
9 Robert LeHane. Thank you, Mr. Galardi, for
10 attempting to read my mind. We certainly
11 appreciate that this is set up as an interim
12 motion. There is an objection deadline for
13 landlords to object as Mr. Galardi stated,
14 but we don't know whether or not possession
15 of the premises has actually been turned over
16 to the landlords, and we would prefer that
17 the effective date of the rejection of these
18 leases be the later of today or the date that
19 the premises are actually delivered to the
20 landlords by surrender and turnover of the
21 keys. We believe that will avoid a necessity
22 for a multitude of objections whereby maybe
23 landlords get the keys Thursday, Friday or
24 even Wednesday. They have been in the
25 premises post petition. We believe that

1 those landlords are set up with an
2 administrative claim for that time. Thank
3 you, Your Honor.

4 THE COURT: Thank you. All right.
5 I will go to counsel on the phone.

6 MR. POLLACK: Thank you, Your Honor.
7 David Pollack again. Your Honor, I don't
8 have any problem with the date of rejection.
9 I have verified that our premises are vacated
10 and we only have, I believe, one on the list.
11 However, the motion goes further than just
12 rejecting the leases and wants to or ask the
13 Court to approve rejection of guarantees as
14 well. In most cases I have been in
15 guarantees have been held to be non-executory
16 and therefore not capable of rejection under
17 Section 365, and so with regard to guarantees
18 we would ask that that issue not be granted
19 on an interim order because I don't know how
20 you undo a rejection of the guarantee but be
21 held to the final hearing on this and that
22 the interim apply only to the other relief
23 sought by the debtors.

24 THE COURT: All right. Thank you.

25 MR. GALARDI: Your Honor, addressing

1 first Mr. LeHane's point, again, I think we
2 can set a hard date of Wednesday and then we
3 can have disputes. I think we can get all of
4 the keys back. It is just the hearing to
5 give those notice to get it out today and
6 hopefully it's going to be done. So if we
7 can get them back on Wednesday, I would ask
8 the date to be retroactive to the petition
9 date.

10 With respect to Mr. Pollock's issue
11 on the guarantee, I actually agree with Mr.
12 Pollack that it is not in fact an executory
13 contract, but we do it out of an abundance of
14 caution because if it's not an executory
15 contribution, it's prepetition and
16 prepetition breach. It really is much ado
17 about nothing. If it is prepetition
18 contract, we breach it, and if it's an
19 executory contract, we reject it. I don't
20 know what we're reserving it for. So we have
21 no problem saying we would reject it to the
22 extent it is an executory contract and change
23 the language to reflect that, but I don't
24 want to be bound by a guarantee that I
25 believe is -- even if it's not executory, it

1 is a contract I can breach.

2 THE COURT: Very good. Apparently,
3 Mr. Pollack, you win on that. You have a
4 prepetition claim instead of an executory
5 contract. But in any event the Court is
6 going to approve this motion and --

7 MS. KELBON: Your Honor.

8 THE COURT: Yes.

9 MS. KELBON: Excuse me, Your Honor.
10 Regina Kelbon. Your Honor, with respect to
11 this motion, the motion recites that Circuit
12 City is not occupying these premises. I have
13 not had the opportunity to confirm that with
14 the DIP list that is attached to the motion
15 with Verizon Wireless. I'm assuming Circuit
16 City is not in the premises and Verizon
17 Wireless kiosks are not in the premises but I
18 would like to reserve my rights with that
19 just in case there is any disagreement with
20 that because I'm assuming we are out of those
21 premises as well.

22 THE COURT: I'm assuming so, too,
23 since you have all of your inventory locked
24 and secured.

25 MS. KELBON: That is correct, Your

1 Honor. That's why we think that, but since I
2 cannot on this short notice confirm on a
3 store by store basis which was attached to
4 the list, I will have to go with the debtor's
5 representation that they are not occupying
6 the premises to reserve my rights and my
7 contract.

8 THE COURT: Right. If you need
9 relief, if you find out there is something
10 different, you can always come back to the
11 Court and request appropriate relief. So it
12 will be without prejudice to that.

13 MR. GALARDI: And, Your Honor, I
14 would only add that if they are in the
15 premises -- and most are sublessee and we're
16 rejecting all subleases. So it doesn't mean
17 we have to stay there for their sake. They
18 can get their property out. And now they are
19 on notice. Get it out.

20 THE COURT: Exactly. So the Court
21 is going to approve the rejection of these
22 contracts. The Court is going to approve the
23 rejection as of the petition date with the
24 proviso that the keys be returned to the
25 landlords by Wednesday. If that does not

1 occur, then the Court will entertain any
2 landlord motion for relief as may be
3 appropriate at that point. It is also my
4 understanding that the landlords -- even if
5 they don't have the keys, they have the
6 premises now and can re-enter their property.

7 MR. GALARDI: That is correct, Your
8 Honor. Again, the key issue has become a big
9 one. Sometimes you can't find the keys. The
10 landlords have the key. It is a symbolic
11 gesture more than anything else. I want to
12 reserve. I mean, we will try to get everyone
13 their keys on Wednesday. If not, they
14 reserve their rights to seek an
15 administrative claim and say, hi, you didn't
16 give the keys back. I reserve the right
17 saying you have had the occupancy.

18 THE COURT: I understand the issue.
19 That's why I put the additional comments on
20 record, but from the Court's standpoint the
21 landlords have possession immediately and
22 they can enter this evening if they want if
23 they want to get a locksmith and go in
24 themselves. And the keys are going to be
25 returned. And if we have an issue about

1 whether or not you're holding the keys that
2 you actually do have or somehow using the
3 space, then I will take that up at a
4 different time.

5 MR. LEHANE: Thank you, Your Honor.
6 We actually agree with Mr. Galardi's comment.
7 There is just a date that would need to be
8 filled. It's the landlord objection
9 deadline. I would propose the same 10 days
10 that was put in the GOB motion.

11 MR. GALARDI: We agreed to that and
12 the committee 15.

13 THE COURT: Okay. Ten days for the
14 landlords, committee 15.

15 MR. GALARDI: Those are both
16 weekdays. So I think it works out, the 20th
17 and 25th.

18 THE COURT: I would hope so.

19 MR. GALARDI: Thinking about it, I
20 believe they are.

21 THE COURT: Okay.

22 MR. GALARDI: Your Honor, that then
23 brings us to the last motion on the agenda,
24 and, again, Your Honor, all of our relief has
25 been structured to try to reorganize this

1 company. As Your Honor may know we are a
2 public company. For better or worse we have
3 been operating losses as a result of not
4 having great performance over the number of
5 years. That may be a very significant asset
6 for this company. Accordingly, what has now
7 become somewhat common with public companies
8 is to seek relief to limit the trading in the
9 equity security so as to not have a change in
10 control, you know, inadvertent change in
11 control. What we have sought -- and, again,
12 this is clearly an interim order with the
13 committee to come back to it -- is to seek an
14 order from this Court establishing procedures
15 eliminating trading and security during this
16 interim period obviously subject to people's
17 rights to come in and to object to that and
18 the committee's right to object. It is to
19 preserve what may be a very significant asset
20 either for a potential purchaser or for a
21 standalone plan, namely the NOLs that we have
22 at the current time. Again, Mr. Besanko is
23 in the courtroom and could testify as to the
24 size of the NOLs, our ability to use NOLs.
25 Obviously if there is a different outcome,

1 these procedures could be vacated at that
2 time, but right now, hoping to reorganize or
3 to sell and to have that as an asset, we
4 would like to do everything possible to
5 preserve that. These procedures I understand
6 have been granted in cases in this
7 jurisdiction. I know they have been granted
8 in cases in other jurisdictions, and we would
9 ask Your Honor to grant the relief to limit
10 the trading and notices set forth in there
11 with respect to our equity security.

12 THE COURT: Any party wish to be
13 heard on this motion? Okay. The Court has
14 reviewed the motion and I find it entirely in
15 order and will approve it on an interim
16 basis.

17 And, Mr. Galardi, I had one other
18 motion we had to take up, which is a motion
19 to file under seal. Are you going to speak
20 to that?

21 MR. GALARDI: Your Honor, I think I
22 sort of addressed it, but I probably didn't
23 get an order for it. Those are two fee
24 letters that we discussed earlier, and I had
25 had a dialogue with the U.S. Trustee as to

1 whether those should be disclosed. We would
2 ask Your Honor to keep those under seal, as I
3 mentioned, under record. The total amount of
4 the fees with respect to the facility are in
5 the DIP budget. Our DIP budget is actually
6 higher than that. We would say because of
7 pricing issues and other issue what GE or
8 Wells or Bank of America gets is really a
9 confidential business matter. We would ask
10 Your Honor to enter the order, again,
11 allowing us to file those fee letters under
12 seal. We have given it to the U.S. Trustee's
13 Office. We have given it to the Court. If
14 there is someone who has an actual real
15 interest, we understand they can come to the
16 Court and ask for that. We are not trying to
17 say in all circumstances, but indeed we think
18 we need to file as record and disclose
19 confidential business information of those
20 companies and we ask Your Honor to enter that
21 order.

22 THE COURT: Very good. Office of
23 the U.S. Trustee wish to be heard on this
24 issue?

25 MR. VAN ARSDALE: Your Honor, we did

1 have a conversation prior to court, and the
2 resolution of it was as represented to the
3 Court, and I think that that suits fine. And
4 it still leaves it open if someone really
5 wants to know this to come to the Court and
6 ask that it be unsealed.

7 THE COURT: Very good.

8 MR. GALARDI: And clearly, Your
9 Honor, we will give it to the committee. We
10 know the committee will have to get the fee
11 letters and we will give it to the committee.
12 We are not going to make them come and get a
13 motion. It is standard before we have to go
14 to a final hearing.

15 THE COURT: Very good. All right.
16 The Court is going to approve the motion to
17 file the fee letters under seal subject to
18 further order of the Court. All right. At
19 this point I think we have taken up all the
20 motions that you have filed and we probably
21 need now to do scheduling.

22 MR. GALARDI: Right, the six omnibus
23 hearings and how Your Honor would like to
24 proceed with the next hearings. I guess one
25 of the first questions for Your Honor is on

1 preference. If we go back to my sort of
2 significant dates, December 10th is a big
3 date for us, one, with respect to trying to
4 get a motion to extend the time to assume or
5 reject leases and, two, with respect to the
6 366 deadline. That would be one of the
7 dates. I don't know if Your Honor's practice
8 is to have the hearing on a final DIP at the
9 same, the first omnibus or whether you wanted
10 a separate hearing on that. Anything in that
11 pre-December 10th date as a first omnibus
12 will work well for us.

13 THE COURT: Do you think you will
14 need any date in November or are you looking
15 at the first part of December?

16 MR. GALARDI: Well, I know I'm going
17 to get a TRO on it. So I'm looking -- Your
18 Honor, I think if we did it in early December
19 as opposed to -- because Thanksgiving will
20 sort of put everybody in. We have given some
21 10 days. So 10 days from today and 15 days
22 from today is the 20th and 25th. That Friday
23 or Thursday. Your Honor, unless -- I don't
24 think so. I think probably the very first
25 week of December would be a good day that

1 will allow us to give notice.

2 THE COURT: How about Friday, the
3 5th of December?

4 MR. GALARDI: That sounds like a
5 good day. That will give us 15 to 20 days
6 notice for the DIP. Can we put the DIP --

7 THE COURT: Put everything on that
8 date.

9 MR. GALARDI: Okay. Your Honor,
10 again as to practice, how does Your Honor
11 like to handle applications to employ
12 professionals? Does that go on the first
13 omnibus date? How would you like to do that?
14 I don't want to overload the calendar but I
15 know we will have those filed shortly. How
16 would Your Honor like to proceed?

17 THE COURT: Let's put them for the
18 same date.

19 MR. GALARDI: Okay. Thank you.

20 THE COURT: And do you want to do an
21 afternoon hour or do you prefer to do that in
22 the morning? What is best?

23 MR. GALARDI: Your Honor, since that
24 may be a long day, I sort of ask that we
25 maybe get the whole day.

1 THE COURT: You can have the whole
2 day.

3 MR. GALARDI: Starting -- if we are
4 having the whole day, I think many of us will
5 travel in the night before. But even if we
6 started at 10:00 -- knowing my flights from
7 the northeast, we will land at 9:00. If we
8 start at 10:00, that still allow people to
9 come in in the morning from various
10 locations. So starting at 10:00 I think
11 people will have the flexibility to come in
12 that morning.

13 THE COURT: That's fine. We will
14 start at 10:00 and you have the day.

15 MR. GALARDI: Thank you. Working
16 off of that, Your Honor, again if possible to
17 get two days in a month, I would say some
18 period 14 days or longer after that December
19 5th hearing.

20 THE COURT: We can do the 19th. We
21 can do the 22nd. I can do the afternoon of
22 the 23rd.

23 MR. GALARDI: I think my wife
24 doesn't want me here on the 23rd. How about
25 the 22nd? So that gives us a little more

1 than two weeks if that works.

2 THE COURT: Again, I have that
3 entire day. What kind of hour?

4 MR. GALARDI: Why don't we start in
5 the morning on that day, Your Honor, and,
6 again, we will try to balance the calendar.
7 If we think we need a full day, we can
8 contact. But can we do a morning hearing.

9 THE COURT: Yes. We will set it at
10 10:00.

11 MR. GALARDI: Thank you. Now the
12 new year brings with it the deadline. So
13 something close to the 17th, Your Honor,
14 would be good assuming that lawyers leave
15 everything to the last minute. So sometime
16 around December 11th -- I mean, January 11th
17 to the 16th I think will be a helpful hearing
18 because we do have the loan commitment and
19 try to get there. So I don't know what Your
20 Honor's availability is.

21 THE COURT: That week is tight, but
22 I can do the 16th. I can give you all day on
23 the 16th or I can do the 12th.

24 MR. GALARDI: Your Honor, since life
25 is what it is, let's do the January 16th so I

1 can meet that deadline but give myself the
2 full time to that deadline.

3 THE COURT: All right. We will set
4 that at 10:00 as well.

5 MR. GALARDI: Thank you. Just
6 because there might be other matters, Your
7 Honor, if you have anything the last week of
8 December I think as a precaution.

9 THE COURT: We're going to go back
10 to December?

11 MR. GALARDI: I'm sorry, the last
12 week of January. My apologies.

13 THE COURT: Thursday the 29th.

14 MR. GALARDI: That would be fine.

15 THE COURT: I will set that at
16 10:00.

17 MR. GALARDI: Okay. Your Honor, any
18 time in the first two -- second or third
19 week. It looks like the week of the 9th or
20 the week of the 16th of February. Maybe the
21 week of the 9th and then something towards
22 the end of February before my March deadline.

23 THE COURT: The 13th.

24 MR. GALARDI: That would be good.
25 10:00?

1 THE COURT: 10:00.

2 MR. GALARDI: And though we have a
3 March deadline to file a disclosure statement
4 and plan maybe something that first week of
5 -- how many do I have now? One, two, three,
6 four, five. I'm going to ask for one more,
7 maybe the first week of March, Your Honor.

8 THE COURT: March 3rd at 10:00.

9 MR. GALARDI: Make that six. Thank
10 you.

11 THE COURT: Yes. That is six.

12 MR. GALARDI: We would just fill in
13 that, the case management order and file with
14 those dates, correct?

15 THE COURT: That will be fine. And
16 then depending on where we are at that point
17 we can always set other dates beyond that.

18 MR. GALARDI: Yes, thank you. Your
19 Honor, that concludes the matters again from
20 Circuit City and myself. I truly appreciate
21 your doing this on such a short notice and
22 accommodating us and granting relief that I
23 hope sets the company on good footing going
24 forward. Thank you.

25 THE COURT: I certainly wish you

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1 luck with the case.

2 MR. GALARDI: Thank you.

3 THE COURT: We're done.

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